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March 2, 2006

VIA ELECTRONIC MAIL SERVICE AND HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Application of LMDS for a Certificate of Public Convenience and
Necessity to Provide Competitive Local Exchange and Interexchange
Telecommunications in the State of South Carolina and for
Alternative Regulation, and for Flexible Regulation
Docket No. 2006-____-C, Our File No. 1157-11359

Dear Mr. Terreni:

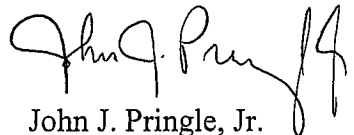
Enclosed is the original and ten (10) copies of the **Application** filed on behalf of
LMDS Holdings, Inc. in the above-referenced matter.

Note that the Applicant is filing concomitantly with this Application a Motion for
Protective Treatment and including therewith **Exhibit E** to the Application under seal.

Please acknowledge your receipt of this document by file-stamping the copy of
this letter enclosed, and returning it via the person delivering same.

If you have any questions or need additional information, please do not hesitate to
contact me.

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: Office of Regulatory Staff Legal Department
Mr. David LaFrance
Katherine E. Barker, Esquire

Enclosures

**Before the
STATE OF SOUTH CAROLINA
PUBLIC SERVICE COMMISSION**

Application of)	
)	
LMDS Holdings, Inc.)	
)	Docket No. _____
for Authority to Provide)	
Competitive Local Exchange and)	
Interexchange Telecommunications)	
Services in the State of South Carolina,)	
Alternative Regulation, and for)	
Flexible Regulation)	

**APPLICATION OF
LMDS HOLDINGS, INC.**

LMDS Holdings, Inc. (“Applicant”, “Company” or “Holdings”), by its attorneys and pursuant to Code of Laws of South Carolina Section 58-9-280 and the South Carolina Code of Regulations Section 103-600, *et seq.*, and all relevant Rules and Regulations of the South Carolina Public Service Commission (“Commission”), respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of South Carolina. The Applicant also requests that its business service offerings be regulated in accordance with the principles and procedures established for alternative regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C. Applicant also requests flexible regulation for its local exchange telecommunications services as the Commission first granted in Order No. 98-165 in Docket No. 97-467-C. Applicant further requests, pursuant to R. 103-601(3) of the Commission’s Rules, that the

Commission waive application to it of certain Commission Rules, as outlined herein. In support thereof, Applicant provides the following information:

I. Identification of the Applicant

1. Applicant's full name is LMDS Holdings, Inc. and is headquartered at 11111 Sunset Hills Road, Reston, Virginia, 20190-5339. Applicant's principal officers, located at the same address, are:

Carl J. Grivner, Chief Executive Officer

Wayne Rehberger, Chief Operating Officer

Bill Garrahan, Acting Chief Financial Officer and Senior Vice President, Corporate Development

Heather Burnett Gold, Senior Vice President, Government Relations

Doug Sobieski, Vice President, Fixed Broadband Wireless Services

Terri Burke, Vice President, Human Resources

Rob Geller, Chief Information Officer

2. Holdings was incorporated under Delaware law on November 4, 2005 and is a wholly owned subsidiary of XO Communications, Inc., a publicly traded Delaware corporation, in which Carl C. Icahn holds a majority interest.¹

3. A copy of Applicant's Articles of Incorporation and the amendments thereto are appended hereto as ***Exhibit A***. Applicant is in the process of becoming

¹ XO Communications, Inc. is in the process of a *pro forma* restructuring merger. As a result of this restructuring, XO Communications, Inc. will be merged into XO Communications, LLC and removed from the ownership structure of Holdings. This will leave XO Holdings, Inc. in the place of XO Communications, Inc. as parent-company to Holdings. Holdings will share the same ultimate owner with XO Communications, LLC, Carl C. Icahn. A Notice of this transaction will be filed with the Commission under separate cover. A press release describing this transaction can be found at <http://www.xo.com/news/278.html>, a copy of which is attached as ***Exhibit C***.

qualified to conduct business within the State of South Carolina as a foreign corporation.

A copy of the qualifying document will be late-filed as ***Exhibit B***.

4. Holdings is in the process of applying for Certificates in the following jurisdictions: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and Wisconsin. At this time, Holdings is certified to provide telecommunications services in the following jurisdictions: District of Columbia, Maryland, Missouri, New York, Texas and Washington. Although this is the first time Holdings is applying for certification, it is important to note that none of Applicant's affiliates have been denied a request for certification to provide telecommunications services by any jurisdictional authority.

II. Designated Contacts

5. The designated contacts for this application are:

John J. Pringle, Jr.
Benjamin A. Traywick
ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street, Suite 500
P.O. Box 2285
Columbia, South Carolina 29202
Telephone: (803) 779-0066
Facsimile: (803) 799-8479

Brad E. Mustchelknaus
Katherine E. Barker Marshall
KELLEY, DRYE AND WARREN, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9669
Facsimile: (202) 955-9792

6. Copies of all correspondence, notices, inquiries and orders in relation to

this Application also should be sent to the following person:

David LaFrance
Regulatory and External Affairs
LMDS HOLDINGS, INC.
11111 Sunset Hills Road
Reston, VA 20190-2000
Telephone: (703) 547-2682
Facsimile: (703) 547-2881

Copies of all correspondence, notice, inquiries and orders relating to consumer issues, billing issues, technical service quality issues, and customer complaint issues should be sent to:

Tamie Whitefoot
LMDS Holdings, Inc.
4800 Concentric Blvd.
Saginaw, MI 48604
Telephone: (877) 714-6398
Facsimile: (989) 758-6510
Email: tamie.whitefoot @xo.com

Copies of all correspondence, notice inquiries and orders relating to tariff or pricing issues should be sent to:

David LaFrance
Regulatory and External Affairs
LMDS HOLDINGS, INC.
11111 Sunset Hills Road
Reston, VA 20190-2000
Telephone: (703) 547-2682
Facsimile: (703) 547-2881

III. Description of Network and Authority Requested

7. By this Application, Holdings seeks authority to provide telecommunications transport services, as a facilities-based and resale competitive local exchange and interexchange carrier, to business customers and other carriers in the State of South Carolina. The Applicant plans to initially offer dedicated point-to-point transport and data services to enterprise customers and other common carriers. At a later date, Holdings may expand its service offerings, to include a broader range of products and services. Accordingly, Holdings is requesting the Commission certify Holdings to

provide a full range of local exchange and interexchange services.

8. Initially, Company intends to focus on deploying technology to provide a core set of communications transport services tailored to meet specific needs of carriers, particularly commercial mobile radio service (CMRS) providers and enterprise business customers with high capacity point-to-point digital data communication needs. Further, as business and economic circumstances dictate, Company intends to provide additional local exchange, exchange access and dedicated transport services.

9. With respect to geographic coverage area for its intended services, Holdings requests authority to operate as a competitive local exchange carrier and interexchange carrier on a statewide basis. Holdings will provide its data-only broadband managed network solutions primarily through a combination of traditional wireline elements and its FCC-licensed, Local Multipoint Distribution Service ("LMDS") spectrum. The company will provide high-capacity access alternatives to the exclusive use of existing copper and fiber optic based telecommunications services. These services will include point-to-point data connectivity at speeds ranging from T1 through OC-3 levels. The company's primary services will include Ethernet service using 10Mbps and 100Mbps interfaces and dedicated high speed Internet access. The equipment Holdings has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet protocol ports for Ethernet services.

10. Insofar as the Company will not initially provide voice-grade local exchange services, it will not provide operator services and directory assistance. The Company intends to eventually collocate its equipment in incumbent local exchange carrier central offices in order to interconnect with other carriers and to secure access to unbundled network elements. To the extent that Holdings provides voice grade local

exchange services in the future, operator services and directory assistance will be provided.

11. Holdings has not been cited, sanctioned or investigated by any state or federal regulatory authority

12. Initially, Holdings does not intend to offer dialtone or voice grade services to end users. Accordingly, Holdings respectfully requests waiver of reporting and service requirements that are applicable to carriers offering voice grade or dialtone services, including the provision of E-911 services. Holdings will comply with all rules and regulations governing the provision of dialtone or voice grade service if and when Holdings begins to offer such service.

IV. Qualifications of the Applicant

13. As demonstrated below, Holdings is well-qualified managerially, technically and financially to provide the competitive interexchange telecommunications services for which authority is requested in this Application.

14. Applicant's management team includes individuals with substantive experience in successfully developing and operating telecommunications business. Consequentially, the Company has the adequate internal technical resources to support its South Carolina operations. This expertise in the telecommunications industry makes Applicant's management team well-qualified to operate its local exchange and interexchange operations in South Carolina. Specific details of the business and technical experience of Holdings' officers and management personnel are attached as *Exhibit D*, which also contain biographies and a brief description of the business experiences of key management personnel who will be responsible for Applicant's telecommunications services in South Carolina and throughout the United States.

15. As is evident from the information contained in ***Exhibit D***, Applicant is managed by persons with substantial technical expertise in operating telecommunications networks. This wealth of expertise will enable Holdings to provide its interexchange customers with advanced, state-of-the-art technology, for its telecommunications services.

16. Applicant is a recently-formed entity, and as such does not have a significant financial history of its own, and has attached projected financial statements as ***Exhibit E under seal***, along with a Motion seeking confidential treatment of same. Applicant will receive an additional infusion of capital once the transaction outlined in Footnote 1 is completed.

17. Company has historically operated as a wholly owned subsidiary of XO Communications, Inc., a publicly traded company that has funded Applicant's operations. XO Communications, Inc.'s Securities and Exchange Commission Form 10Q for the second quarter of 2005 is included as ***Exhibit F***.

18. Applicant will bill all of its end-user customers directly. Holdings does not intend to utilize a billing agent in issuing bills for services rendered to end users. Applicant will not use a "billing clearinghouse" or other outside entity to issue bills to its customers. All bills sent to end-user customers will bear the Company's name and provide a toll-free number for customer inquiries and complaints.

19. Holdings has a toll free number available for its customers to contact the Company with billing and service related issues: 1-877-714-6398.

20. Customers may contact the Company with billing related issues twenty four (24) hours a day, seven (7) days a week by using the toll free number provided in Paragraph 20. In addition, customers may request assistance for any billing questions or

general customer inquiries on-line via

https://www.businesscenter.xo.com/ecustomer_enu, or for repair issues or other requests,

including billing support, Customers may send an e-mail to cr-snaops@xo.com.

21. Applicant has attached its proposed tariffs as ***Exhibit G***.

V. Requested Regulatory Treatment and Waivers

22. Applicant hereby agrees to abide by all applicable statutes and all applicable Orders, Rules, and regulations entered and adopted by the Commission. Additionally, as a competitive provider of telecommunications services in South Carolina, Applicant respectfully requests that it be subject to the same streamlined regulatory treatment applicable to other competitive carriers.

23. Applicant requests a waiver of the requirement of Rule 103-631 to publish and distribute local exchange directories. Applicant will enter into an agreement with carriers and their directory publishing affiliates to include the names of its customers in directories.

24. Applicant requests, pursuant to Rule 103-610, that it be allowed to keep all records required under the rules at its principal offices.

25. Applicant requests that it be exempt from any record keeping rules or regulations that might require a carrier to maintain its books and records in conformance with the Uniform System of Accounts (“USOA”). The USOA was developed by the Federal Communications Commission as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Applicant will not be subject to rate base regulation and therefore requests Commission of approval for Applicant to maintain its books in accordance with Generally Accepted Accounting Principles.

26. Applicant requests that it be granted a waiver of Commission Rule 103-612.2.3, which requires that operating area maps be filed with the Commission.

Applicant will operate within the service areas of the incumbent local exchange carriers.

27. Applicant requests flexible regulation for its telecommunications services as the Commission granted in Order No 98-165 in Docket No. 97-467-C. Specifically, Applicant requests that the Commission: a) adopt for local exchange services a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels; and b) presume that Applicant's tariff filings for local exchange services be valid upon filing, subject to the Commission's authority, within thirty (30) days, to institute an investigation of such filings. At the discretion of the Commission such filings may be suspended pending further order of the Commission and any such filings may be subject to the same monitoring process as the Commission applies to other, similarly situated carriers.

28. Applicant requests that its interexchange business service offerings be regulated pursuant to the procedures described and set forth in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C. Specifically, Applicant requests that the Commission regulate its business services in the same manner as the Commission regulates those of AT&T Communications of the Southern States, Inc. ("AT&T"). Further, Applicant requests that the Commission: a) remove the maximum rate tariff requirements for Pac-West's business services and private line, and customer network-type offerings; b) presume that Applicant's tariff filings for these services be valid upon filing. However, if the Commission institutes an investigation of a particular filing within seven (7) days, the tariff filing will be suspended until further order of the Commission; and c) grant

Applicant the same treatment as AT&T in connection with any future relaxation of the Commission's reporting requirements.

29. Applicant respectfully requests that this Petition be given expedited consideration.

VI. Public Interest

30. A decision by the Commission to grant Applicant authority to provide local exchange and interexchange telecommunications services is in the public interest.

Applicant is well qualified to operate as such a service provider in South Carolina.

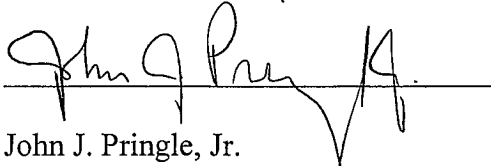
Consumers of telecommunications services in South Carolina will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology.

31. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the local exchange and interexchange telecommunications market. Granting Holdings' Application would enhance the development of competition in the local exchange and interexchange markets and provide the consumers of South Carolina with all of the benefits described above.

WHEREFORE, Applicant respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity to provide competitive local exchange and interexchange telecommunications services in the State of South Carolina as set out herein, and grant such other relief as is just and proper.

Respectfully submitted,

LMDS HOLDINGS, INC.

By: 

John J. Pringle, Jr.
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Phone: (202) 955-9600
Fax: (202) 955-9792

Its Counsel

March 2, 2006

EXHIBIT A

ARTICLES OF INCORPORATION

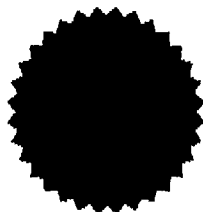
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "LMDS HOLDINGS, INC.", FILED IN THIS OFFICE ON THE FOURTH DAY OF NOVEMBER, A.D. 2005, AT 12:09 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



4056099 8100

050903140

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4276245

DATE: 11-04-05

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:19 PM 11/04/2005
FILED 12:09 PM 11/04/2005
SRV 050903140 - 4056099 FILE

CERTIFICATE OF INCORPORATION

OF

LMDS HOLDINGS, INC.

The undersigned, a natural person, for the purpose of organizing a corporation for conducting the business and promoting the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware (particularly Chapter 1, Title 8 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "General Corporation Law of the State of Delaware"), hereby certifies that:

FIRST: The name of the corporation (hereinafter called the "Corporation") is

LMDS HOLDINGS, INC.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The nature of the business to be conducted and the purposes of the Corporation are:

To purchase or otherwise acquire, invest in, own, lease, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade and deal in and with real property and personal property of every kind, class and description (including, without limitation, goods, wares and merchandise of every kind, class and description), to manufacture goods, wares and merchandise of every kind, class and description, both on its own account and for others;

To make and perform agreements and contracts of every kind and description; and

Generally to engage in any lawful act or activity or carry on any business for which corporations may be organized under the Delaware General Corporation Law or any successor statute.

FOURTH:

The total number of shares of all classes of stock which the Corporation shall have authority to issue is Three Thousand (3,000), consisting of 3,000 shares of Common Stock, Zero Dollars and One Cent (\$0.01) Par Value per share (the "Common Stock").

FIFTH: The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Anne T. Leland	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition and not in limitation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, conferred by the State of Delaware, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the By-Laws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

B. After the original or other By-Laws of the Corporation have been adopted, amended or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised by the Board of Directors of the Corporation.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

EIGHTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented from time to time, indemnify and advance expenses to, (i) its directors and officers, and (ii) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section as amended or supplemented (or any successor), provided, however, that except with respect to proceedings to enforce rights to indemnification, the By-Laws of the Corporation may provide that the Corporation shall indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The

Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by the Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

NINTH: No director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability or limitation thereof is determined. No amendment, modification or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, modification or repeal. If the General Corporation Law of the State of Delaware is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

TENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ELEVENTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by

said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article.

I, the undersigned, being the sole incorporator, for the purpose of forming a Corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, to certify that the facts herein stated are true, and accordingly have hereto set my hand this 4th day of November, 2005.


Anne T. Leland

TRA 2088230v.1

EXHIBIT B

QUALIFICATION TO DO BUSINESS

(TO BE LATE-FILED)

EXHIBIT C

PRESS RELEASE


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XO Communications Announces Agreement to Create National Fixed Broadband Wireless Company


[Contact XO](#)
[Corporate H](#)
[1.703.547.20](#)
[Contact us onl](#)

November 04, 2005

Company Will Focus Business on Delivering Fixed Broadband Wireless Services to Businesses and Service Providers

National Wireline Telecommunications Business Will Continue as a Private Company Wholly-Owned by Affiliates of Carl Icahn

RESTON, VA - XO Communications, Inc. (OTCBB: XOCM.OB) today announced an agreement that will create a leading provider of fixed broadband wireless services to businesses and service providers. In order to create and finance the fixed wireless business, XO will sell its national wireline telecommunications business for \$700 million in cash. Following the sale, the Company will retain its fixed broadband wireless spectrum assets and be uniquely positioned to be a leading provider of fixed broadband wireless services nationally as one of the largest holders of fixed wireless licenses in the 28 GHz-31 GHz spectrum range covering more than 70 U.S. major metropolitan markets.

"The action we take today will create a pure-play fixed broadband wireless provider that combines significant resources with in-depth industry expertise to meet the growing demand for high-bandwidth broadband wireless services," said XO CEO Carl Grivner. "The market opportunity to provide these services has emerged, and our new focus on fixed wireless communications will enable us to offer robust fixed wireless solutions to businesses, mobile phone companies, and wireline telecommunications companies."

The proceeds from the sale of the wireline business will be used to repay XO's outstanding long-term debt, to offer to redeem, at the closing of the sale, XO's outstanding preferred stock and to fund growth and development of the wireless business. Once the sale is completed, the wireless business will be debt-free and is currently expected to have in excess of \$300 million in cash to fund its operations and for other corporate purposes. The Company's wireless services have already been made available to businesses and wireless service providers in select markets and, using its cash position and new strong balance sheet, the Company plans to launch its services on a wider basis in the near future. The transaction is anticipated to close in late 2005 or early 2006.

The agreement is the culmination of an extensive process established by the Company over a period of several months during which multiple bids for the wireline business of the Company were evaluated by a Special Committee of the Company's Board of Directors. The winning bidder was Elk Associates LLC, an entity owned by XO's controlling stockholder, Carl Icahn, which has executed a definitive agreement to purchase the wireline business. However, as provided in the definitive agreement, the Company

and the Special Committee remain open to consideration of superior proposals from third parties in certain events, subject to paying Elk Associates a break-up fee of 1% of the consideration payable in the transaction in the event that the Company receives and determines to accept a superior proposal.

The Special Committee overseeing this process consists solely of non-management directors who are not affiliated with Mr. Icahn. The Special Committee led the negotiation of the terms of the agreement with Elk Associates LLC on behalf of the Company and, after receiving the opinion of the Company's financial advisor, Jefferies & Co., Inc., to the effect that the consideration to be received by the Company in the transaction is fair to the Company from a financial point of view, approved the agreement and recommended its approval by the Board of Directors of the Company. Completion of the transaction will be subject to a number of conditions, including shareholder approval. The description of the agreement contained herein is qualified in its entirety by reference to such agreement, which will be publicly filed as required under applicable securities laws.

The "XO Communications" brand name will be transferred to the private company and thereby will remain with the national wireline telecommunications business. XO anticipates operating its fixed wireless business under a new name.

It is anticipated that the wireless and wireline companies will enter into commercial agreements to sell each other's products and services at competitive rates in order to take advantage of market opportunities.

About XO Communications

XO Communications is a leading provider of national and local telecommunications services to businesses, large enterprises and telecommunications companies. XO offers a complete portfolio of services, including local and long distance voice, dedicated Internet access, private networking, data transport, and Web hosting services as well as bundled voice and Internet solutions. XO provides these services over an advanced, national facilities-based IP network and serves more than 70 metropolitan markets across the United States. For more information, visit www.xo.com.

FOR MORE INFORMATION CONTACT:

CHAD COUSER / XO COMMUNICATIONS
703-547-2746
CHAD.COUSER@XO.COM

FORWARD LOOKING STATEMENT NOTE

THE STATEMENTS CONTAINED IN THIS RELEASE THAT ARE NOT HISTORICAL FACTS ARE "FORWARD-LOOKING STATEMENTS" (AS SUCH TERM IS DEFINED IN THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995) THAT INVOLVE RISKS AND UNCERTAINTIES. THESE STATEMENTS INCLUDE THOSE DESCRIBING XO'S EXPECTED FUTURE BUSINESS AND NETWORK OPERATIONS AND RESULTS OF OPERATIONS, XO'S ABILITY TO SERVICE THE GROWING DEMAND FOR HIGH-BANDWIDTH BROADBAND WIRELESS SERVICES, XO'S ABILITY TO INCREASE SALES ONCE IT BEGINS

OPERATING UNDER A NEW NAME, AND XO'S ABILITY TO CONTINUE TO IMPLEMENT EFFECTIVE COST CONTAINMENT MEASURES. MANAGEMENT CAUTIONS THE READER THAT THESE FORWARD-LOOKING STATEMENTS ARE ONLY PREDICTIONS AND ARE SUBJECT TO RISKS AND UNCERTAINTIES AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE INDICATED IN THE FORWARD-LOOKING STATEMENTS AS A RESULT OF A NUMBER OF FACTORS. THESE FACTORS INCLUDE, BUT ARE NOT LIMITED TO, THOSE RISKS AND UNCERTAINTIES DESCRIBED FROM TIME TO TIME IN THE REPORTS FILED BY XO COMMUNICATIONS, INC. WITH THE SECURITIES AND EXCHANGE COMMISSION, INCLUDING ITS ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2004 AND ITS QUARTERLY REPORTS ON FORM 10-Q.

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EXHIBIT D

MANAGEMENT BIOGRAPHIES

MANAGEMENT BIOGRAPHIES

Officer and Executive Team Biographies

Carl J. Grivner President

Carl J. Grivner is Chief Executive Officer of XO Communications (“XO”) and LMDS Holdings, Inc. (“Holdings”).

Mr. Grivner's career in telecom and technology spans more than 25 years. He previously served as Chief Operating Officer at Global Crossing. Prior to joining Global Crossing in June 2000, Mr. Grivner served as Chief Executive Officer of Worldport Communications and before that, he served as Chief Executive Officer, Western Hemisphere, of Cable & Wireless PLC. Additionally, Mr. Grivner has held various senior executive positions at Advanced Fiber Communications and Ameritech. Mr. Grivner began his career working in sales at IBM. He also served in the United States Marine Corps from 1975-1978. He earned his Bachelor of Arts from Lycoming College.

Thomas W. Cady Interim Chief Executive Officer and Senior Vice President, Marketing and Sales

Tom Cady is a senior executive with an extensive background in the information technology industry. Tom has in-depth general management experience, with expertise in marketing and sales leadership developed over twenty eight years in both corporate and entrepreneurial environments. Tom's career began with a strong foundation built at Xerox and IBM, where he continuously progressed through positions of increased responsibility in sales, marketing and general management. More recently, Tom has spent several years in the broadband communications industry, serving as Chief Marketing Officer for XO Communications and Adelphia Communications, President/COO & co-founder of BroadStreet Communications, and President & CEO of two early stage software companies focused on solutions for broadband service providers.

Currently, Tom serves as a senior executive for LMDS Holdings, Inc., a wireless broadband service provider. Additionally, Tom serves as the non-executive Chairman of AIMS Technology Group, whose focus is on developing technology solutions that support integrated and targeted marketing programs.

Tom holds a B.S. degree in Business Administration from Virginia Tech, and an MBA from the University of Richmond.

Wayne Rehberger
Executive Vice President, Chief Operations Officer

Wayne Rehberger is chief operating officer of XO and Holdings. In this role he is responsible for all aspects of XO's operations including marketing, network and sales. He previously served as the company's chief financial officer for more than three years. During that time he led the company through a successful financial and operational restructuring that improved XO's operating metrics and financial performance through efficiency initiatives and the reduction of operating and overhead costs.

Mr. Rehberger has 20 years of diversified telecommunications management experience including having served in a number of executive roles at MCI Communications Corporation. During his time at MCI, Mr. Rehberger served in a variety of corporate and business unit accounting, finance, and operational support roles. He was involved in major acquisition activities, both from a business development and operational integration role. Mr. Rehberger held the position of senior vice president of Finance at MCI WorldCom prior to joining XO.

Prior to joining MCI, Mr. Rehberger served four years in the U.S. Army, achieving the rank of captain before joining KPMG's consulting practice in Washington, D.C. where he worked on various management consulting engagements focused on business strategy, marketing, and program/product management.

Gregory W. Freiberg
Vice President and Chief Financial Officer, LMDS Holdings, Inc.
Vice President and Controller, XO Communications

Greg Freiberg's career has focused on finance and strategy for organizations in transition and has included high level responsibility for both operational financial management and control. He has been responsible for significant activities in roadshow and stakeholder relations, including the IPO and financing context, and numerous mergers, acquisitions and divestitures. He has worked to create shareholder value for many U.S. and International based multinational enterprises.

Mr. Freiberg joined XO Communications as vice president and controller in June 2005. He is responsible for all of the companies accounting, SEC reporting, Sarbanes-Oxley compliance, and procurement. In December of 2005, he was appointed chief financial officer of the LMDS Holdings, Inc.'s business unit.

Mr. Freiberg previously served as senior vice president and controller of Asia Netcom, a wholly owned subsidiary of China Netcom. He was also on the Board of Directors for joint ventures with Hutchison in Hong Kong, Dacom in Korea, Digitel in the Philippines, Starhub in Singapore, and Marubeni in Japan.

Prior to Asia Netcom, Mr. Freiberg was Senior Vice President and Controller of Asia Global Crossing. He was a core member of the Executive team which guided the company through a successful restructuring and sale to China Netcom.

Mr. Freiberg spent more than 8 years with MCI, including controller for MCI International, and 5 years as the founding CFO for MCI's expansion into Asia.

Mr. Freiberg received a BS in Accounting from the University of South Dakota and has passed the Certified Public Accountant examination. He served in the Army National Guard for more than 9 years culminating as a Company Commander.

Bill Garrahan

Acting Chief Financial Officer and Senior Vice President, Corporate Development & Strategic Planning

Bill Garrahan is both acting Chief Financial Officer and Senior Vice President of Corporate Development at XO and Holdings. He oversees the company's financial functions and leads the company's mergers and acquisitions, corporate strategy and new business development activities. He joined the company in July 2001 as a senior member of its corporate development team, later playing a critical role in the company's acquisition of Allegiance Telecom.

Garrahan has nearly 20 years of experience in the telecommunications industry including previous positions at Lehman Brothers as a telecommunications equity analyst and MCI, where he held a variety of executive finance and business development functions, including Vice President of Corporate Planning and CFO of MCI's \$6 billion consumer business unit.

Simone Wu

Senior Vice President, Acting General Counsel & Secretary

Simone Wu is acting General Counsel and Vice President at XO and Holdings. In this role, she oversees all of the company's legal affairs, which include commercial, corporate, employment, and intellectual property matters, as well as all litigation in which the Company is involved.

Wu has more than 16 years of wide-ranging experience in the telecommunications industry, including domestic and international business and corporate development, intellectual property and commercial matters, and legal and regulatory affairs. Prior to joining XO in 2001, Wu held business and legal positions at MCI and AOL among other places, and practiced domestic and international transactional and telecommunications law at the law firm of Skadden, Arps, Slate, Meagher & Flom.

She graduated with high honors from the University of Michigan with a degree in Political Science and as a Harlan Fiske Stone Scholar from Columbia University Law School.

Ron Scott
Vice President, Real Estate

Mr. Scott holds two senior executive titles at XO and Holdings and is currently responsible for XO's strategic business units and XO's national real estate portfolio. As Group President/CEO of XO One, XO Hosting and XO Interactive, Ron is charged with growing revenue profitably and strategically positioning these business units to maximize XO's core customer value proposition. Ron is also Senior Vice President of Real Estate responsible for managing XO's national real estate portfolio which includes building access and all company lease obligations.

Mr. Scott has over 20 years experience in the telecommunication services industry. Prior to joining XO, Ron co-founded Access Communications with the Trammell Crow family in Dallas, Texas. Access was a pioneer telecommunications startup that provided bundled telecommunication services to tenants in upscale commercial office properties. As President and CEO of Access Telecommunication Group, L.P., Ron spent 10 years growing this startup and ultimately led the transaction to sell the company to Shared Technologies. Upon the sale of his company, Ron served as Vice Chairman of the Board of Shared Technologies in West Hartford, Connecticut.

Prior to Mr. Scott's startup at Access, Ron held executive positions and led sales and marketing efforts in the cable industry. He was National Sales VP for CCX, Inc., a cable and connector manufacturer. Ron also spent several years as Director of Marketing and Sales for United Cable Television and Director of Sales for Cox Cable.

Mr. Scott was formerly on the Board of Directors for North American Telecommunication Association. In 1992 and 1993, Mr. Scott was recognized by the Southern Methodist University's Cox School of Business as CEO of the 11th and 25th fastest growing privately held company in the Dallas metropolitan area. Mr. Scott has a Bachelor's degree in Political Science from the University of North Texas.

Heather Burnett Gold
Senior Vice President, Government Relations

Heather Burnett Gold is Senior Vice President of Government Relations at XO and Holdings. In this role she oversees all of XO's advocacy with the federal government, including Congress, the FCC, other federal agencies, and the White House, and with state legislative and regulatory entities.

A telecommunications veteran with more than 20 years of experience, Gold joined XO from the KDW Group, where she was a co-founder & principal, providing strategic and financial planning to companies in the telecommunications industry with respect to opportunities created by regulatory change. Prior to The KDW Group, Gold was vice president of industry affairs at Intermedia Communications where she oversaw the company's regulatory, legislative and industry relations at both the state and federal levels. Before Intermedia, Gold served as president of the Association for Local Telecommunications Services (ALTS) from 1993 to 1998. During her tenure at ALTS, Gold was a leading proponent for opening local telecommunications markets to facilities-based competition and a driving force behind the Telecommunications Act of 1996. Before joining ALTS, she served as vice president of member services for the Competitive Telecommunications Association (CompTel).

Gold holds an MBA in marketing and finance from Washington University in St. Louis and Bachelors and Masters degrees in Economics from Tufts University.

Benjamin R. Preston

Principal Counsel, Director of Legal Affairs & Assistant Secretary

Benjamin R. Preston is Principal Counsel, Corporate Development & Finance and Assistant Secretary of XO Communications, Inc. and LMDS Holdings, Inc. In this role, Mr. Preston handles all mergers & acquisitions, joint ventures, corporate finance, Securities & Exchange Commission reporting, and corporate governance matters at XO.

Mr. Preston has served in this capacity since January 2004. Prior to joining XO, Mr. Preston practiced corporate & securities law at Sidley Austin Brown & Wood LLP. He is a graduate of the University of Massachusetts at Amherst, Georgetown University Law Center, and McDonough Graduate School of Business at Georgetown University.

Chet Kudtarkar

Vice President- Finance

Chet Kudtarkar has over 26 years of experience with over 18 years in the telecommunications industry. He has served in various financial management positions in the area of Planning, Analysis and Business Development. He also has experience in Marketing, Implementation and Program Management. In 1994 he was involved in the early stages of starting MCIMetro, a competitive local exchange carrier. With MCI, he was responsible for negotiating all interconnection agreements with incumbent local exchange companies. He has an extensive background in Financial Planning and Telco Cost management. Most recently, Kudtarkar has been the Director of Strategy and Corporate Development for XO Communications.

Chet Kudtarkar has an MBA from the Wharton School and a Masters in Engineering from the University of Mississippi.

Brad Magnuson
Director of Engineering

Brad Magnuson has over 15 years experience in design of public and private wireless telecommunications networks, metropolitan fiber based applications, and national IP infrastructures.

He has held various engineering management positions at XO Communications over the past ten years including District Director of Engineering for the Western Region where he designed CLEC networks in several western cities. He has also been involved in design of XO's national long haul fiber network, in development of its VoIP product and in its early technology trials of equipment operating in the LMDS spectrum. Prior to joining XO, Brad spent four years with a regional gas utility where he assisted in engineering a private microwave system carrying voice and telemetry applications across three western states. Brad currently serves as Director of Engineering for Fixed Wireless Applications within XO Communications.

Brad has a Bachelor of Science in Electrical Engineering from the University of Utah with emphasis in Microwave Engineering, Computer Engineering, and Digital Signal Processing in telecommunications systems.

EXHIBIT E

PROJECTED FINANCIAL STATEMENTS

CONFIDENTIAL AND PROPRIETARY – FILED UNDER SEAL

EXHIBIT F

**SECURITIES AND EXCHANGE COMMISSION FILING OF XO
COMMUNICATIONS, INC.**

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2005

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Commission File No. 0-30900

XO Communications, Inc.

(Exact name of registrant as specified in its charter)

**Delaware
(State or other jurisdiction of
incorporation or organization)**

**54-1983517
(I.R.S. employer
identification no.)**

**11111 Sunset Hills Road
Reston, Virginia 20190
(Address of principal executive offices, including zip code)
(703) 547-2000
(Registrant's telephone number, including area code)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined by Rule 12b-2 of the Exchange Act.). YES ☒ NO ☐

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. YES ☒ NO ☐

As of August 8, 2005, the number of shares of common stock of XO Communications, Inc. issued and outstanding was 181,933,035.

XO Communications, Inc. and Subsidiaries**Index to Form 10-Q**

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PART I. FINANCIAL INFORMATION**Item 1. Financial Statements****XO Communications, Inc. and Subsidiaries****Condensed Consolidated Balance Sheets****(Amounts in thousands, except for share and per share data)**

	<u>June 30, 2005</u> (Unaudited)	<u>December 31, 2004</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 270,143	\$ 233,989
Marketable securities and other investments	9,455	17,300
Accounts receivable, net of allowance for doubtful accounts of \$37,145 at June 30 , 2005 and \$38,981 at December 31, 2004, respectively	137,683	150,101
Other current assets	33,121	50,864
Total current assets	450,402	452,254
Property and equipment, net	764,729	820,536
Broadband wireless licenses and other intangibles, net	115,567	139,866
Other assets, net	44,917	46,729
Total assets	<u>\$1,375,615</u>	<u>\$1,459,385</u>
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 86,055	\$ 88,010
Other current liabilities	225,073	241,532
Total current liabilities	311,128	329,542
Long-term debt and accrued interest payable	382,646	366,247
Other long-term liabilities	67,502	73,691
Total liabilities	761,276	769,480
Class A convertible preferred stock	210,596	204,353
Commitments and contingencies		
Stockholders' equity:		
Preferred stock: par value \$0.01 per share, 200,000,000 shares authorized: 4,000,000 shares of Class A convertible preferred stock issued and outstanding on June 30 , 2005 and December 31, 2004	—	—
Warrants and common stock, par value \$0.01 per share, 1,000,000,000 shares authorized: 181,933,035 shares issued and outstanding on June 30 , 2005 and December 31, 2004	983,268	989,511
Deferred compensation	(463)	(574)

Accumulated other comprehensive income	1,400	4,712
Accumulated deficit	(580,462)	(508,097)
Total stockholders' equity	<u>403,743</u>	<u>485,552</u>
Total liabilities, convertible preferred stock and stockholders' equity	<u>\$1,375,615</u>	<u>\$1,459,385</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

XO Communications, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(Amounts in thousands, except for share and per share data)
(Unaudited)

	Three months ended June 30, 2005	Three months ended June 30, 2004
Revenue	\$ 362,164	\$ 278,183
Costs and expenses:		
Cost of service (exclusive of depreciation and amortization)	138,024	118,822
Selling, operating, and general	187,772	164,149
Depreciation and amortization	61,097	30,065
Total costs and expenses	386,893	313,036
Loss from operations	(24,729)	(34,853)
Interest income	1,919	841
Investment gain (loss), net	1,891	(3,962)
Interest expense, net	(8,588)	(5,846)
Net loss	\$ (29,507)	\$ (43,820)
Preferred stock accretion	(3,145)	—
Net loss applicable to common shares	\$ (32,652)	\$ (43,820)
Net loss per common share, basic and diluted	\$ (0.18)	\$ (0.31)
Weighted average shares, basic and diluted	181,933,035	140,538,159

See accompanying notes to the unaudited condensed consolidated financial statements.

XO Communications, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(Amounts in thousands, except for share and per share data)
(Unaudited)

	Six months ended June 30, 2005	Six months ended June 30, 2004
Revenue	\$ 723,669	\$ 539,128
Costs and expenses:		
Cost of service (exclusive of depreciation and amortization)	285,947	228,783
Selling, operating, and general	379,466	332,702
Depreciation and amortization	119,461	55,762
Total costs and expenses	784,874	617,247
Loss from operations	(61,205)	(78,119)
Interest income	3,820	2,546
Investment gain (loss), net	1,612	(4,291)
Interest expense, net	(16,592)	(12,450)
Net loss	\$ (72,365)	\$ (92,314)
Preferred stock accretion	(6,242)	—
Net loss applicable to common shares	\$ (78,607)	\$ (92,314)
Net loss per common share, basic and diluted	\$ (0.43)	\$ (0.67)
Weighted average shares, basic and diluted	181,933,035	137,591,467

See accompanying notes to the unaudited condensed consolidated financial statements.

XO Communications, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Amounts in thousands)
(Unaudited)

	Six months Ended June 30, 2005	Six months Ended June 30, 2004
OPERATING ACTIVITIES:		
Net loss	\$ (72,365)	\$ (92,314)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	119,461	55,762
Accrual of interest	16,399	12,886
Stock-based compensation	111	226
Realized loss on investments	3,191	5,665
Changes in assets and liabilities:		
Accounts receivable	12,418	(23,115)
Other assets	(5,875)	(15,198)
Accounts payable	(1,781)	9,118
Accrued liabilities	(21,123)	(7,722)
Net cash provided by (used in) operating activities	50,436	(54,692)
INVESTING ACTIVITIES:		
Capital expenditures, net	(39,529)	(49,124)
Acquisition payments	—	(361,517)
Sales of marketable securities and investments	1,342	21,144
Release of escrow account	25,430	—
Net cash used in investing activities	(12,757)	(389,497)
FINANCING ACTIVITIES:		
Repayments of long term debt and capital leases	(1,525)	(198,363)
Proceeds from issuance of common stock	—	197,612
Proceeds from exercise of stock options	—	2,714
Net cash (used in) provided by financing activities	(1,525)	1,963
Net increase (decrease) in cash and cash equivalents	36,154	(442,226)
Cash and cash equivalents, beginning of period	233,989	478,560
Cash and cash equivalents, end of period	<u>\$270,143</u>	<u>\$ 36,334</u>
SUPPLEMENTAL DATA:		
Cash paid for interest	\$ 1,539	\$ 1,140

Stock issued for acquired businesses	\$	—	\$ 311,307
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See accompanying notes to condensed consolidated financial statements.

XO Communications, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Overview

XO Communications Inc. ("XOC"), a Delaware corporation, through its subsidiaries (collectively referred to as the "Company" or "XO"), owns and operates an integrated metropolitan and nationwide fiber optic network that provides a comprehensive array of telecommunications services to business customers in over 70 United States markets. Voice services include local and long distance services, calling card and interactive voice response systems. Data services include Internet access, private data networking and hosting services. XOC, through its subsidiaries, also offers integrated combined voice and data services in flat rate "bundled" packages. In addition, XO owns licenses to deliver telecommunications services via local multipoint distribution service, or LMDS, wireless spectrum in 75 U.S. cities, which we have begun to use to provide fixed broadband wireless backhaul services to mobile wireless telecommunications carriers. The consolidated financial statements include the accounts and activities of XOC and its subsidiaries.

Basis of Presentation

The condensed consolidated financial statements of the Company are unaudited and have been prepared in accordance with guidelines established for interim financial statements by the Securities and Exchange Commission's (the "Commission") instructions to Form 10-Q and U.S. generally accepted accounting principles. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles in the United States for complete financial statements.

Operating results for any interim period are not necessarily indicative of the results for a full year or for any subsequent interim period. In the opinion of management, the unaudited condensed consolidated financial statements contain all the adjustments (consisting of those of a normal recurring nature) considered necessary to present fairly the financial position and the results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States applicable to interim periods. The accompanying financial statements should be read in conjunction with the audited consolidated financial statements of XO, included in its Annual Report on Form 10-K for the year ended December 31, 2004 (the "2004 Annual Report").

On June 23, 2004 (the "Closing Date"), XO completed the acquisition of all of the telecommunications services assets (the "Acquired Businesses") of Allegiance Telecom, Inc. ("Allegiance"). XO did not acquire Allegiance's customer premises installation and maintenance business, shared hosting business, or dedicated dial-up Internet access service business (the "Unacquired Businesses"). The accompanying financial statements include the results of operations from the Acquired Businesses since June 23, 2004.

Principles of Consolidation

The Company's consolidated financial statements include all of the assets, liabilities and results of operations of subsidiaries in which the Company has a controlling interest. All inter-company accounts and transactions among consolidated entities have been eliminated.

Use of Estimates and Assumptions

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Management periodically assesses the accuracy of these estimates and assumptions. Actual results could differ from those estimates.

In the first and second quarter of 2005, the Company resolved certain billing disputes with telecommunications service providers (the “Carriers”). In accordance with the Company’s policy for disputed charges, all amounts billed by the Carriers had previously been recorded as a cost of service in the Company’s Condensed Consolidated Statement of Operations. Because these disputes were resolved favorably to the Company, they resulted in a reduction of cost of service of approximately \$10.0 million and \$10.5 million during the first and second quarters of 2005, respectively. Additionally, in the second quarter of 2005, the Company revised estimates related to liabilities assumed in relation to the Acquired Businesses. These revisions resulted in a reduction to cost of service of \$3.9 million.

Reclassifications

Certain reclassifications have been made to prior period amounts in order to conform to the current year presentation.

Adjustments

In the second quarter of 2005, in conjunction with a review of certain accounting policies, the Company determined that it was not applying the proper generally accepted accounting principles to lease escalation provisions contained in certain of its operating leases since its emergence from bankruptcy in January 2003. Additionally, the Company determined that depreciation expense related to certain assets had been calculated using lives inconsistent with the Company’s depreciation policy, and that certain leasehold improvements had not been expensed when the related lease contract had been terminated prior to the end of the original lease term. Accordingly, an adjustment of \$8.3 million was recorded to increase selling, operating and general expenses and other current liabilities, and an adjustment of \$2.5 million was recorded to increase depreciation expense and to reduce Property and Equipment, net during the three months ended June 30, 2005. The impact of these adjustments would have increased selling operating and general expense by approximately \$4.5 million, \$3.3 million, and \$0.5 million for the years ended December 31, 2003, December 31, 2004 and the three months ended March 31, 2005, respectively, and would have increased depreciation expense by approximately \$0.5 million, \$1.0 million, and \$1.0 million for the years ended December 31, 2003, December 31, 2004 and the three months ended March 31, 2005, respectively, had they been recorded in the appropriate periods. The Company has concluded that these adjustments are immaterial to the financial statements on both a quantitative and qualitative basis for previously issued financial statements, and to the estimated results of operations for the year ending December 31, 2005. Accordingly, the adjustments have been made in the current period financial statements. These adjustments do not affect the Company’s historical or future cash flows or the timing of payments under the relevant leases.

Net Income (Loss) Per Share

Net income (loss) per common share, basic and diluted, is computed by dividing net income (loss) applicable to common shares by the weighted average number of common shares outstanding for the period. In periods of net loss, the assumed common share equivalents for options, warrants, and the Class A convertible preferred stock are anti-dilutive, and are therefore not included in the weighted average shares balance on the consolidated statement of operations. As of June 30, 2005, the Company has options outstanding to purchase approximately 9.5 million shares of common stock, of which 4.2 million are exercisable, and exercisable warrants to purchase shares up to an additional 23.7 million shares of common stock that can further dilute investors, if exercised.

Stock-Based Compensation

As allowed by Statement of Financial Accounting Standards No. 148, “Accounting for Stock-Based Compensation-Transition and Disclosure,” (“SFAS No. 148”), the Company has chosen to continue to account for

compensation cost associated with its employee stock option plan in accordance with the intrinsic value method prescribed by Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," ("APB No. 25") adopting the disclosure-only provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation," ("SFAS No. 123"). Under this method, no compensation expense is recorded if stock options are granted at an exercise price equal to or greater than the fair market value of the Company's stock on the grant date. If the Company had adopted the fair value method of accounting for its stock awards, stock-based compensation would have been determined based on the fair value for all stock awards at the grant date using a Black-Scholes pricing model and the following weighted average assumptions:

	Three months ended June 30,	
	2005	2004
Expected volatility	61.0%	63.0%
Risk free interest rate	3.8%	2.8%
Dividend yield	0.0%	0.0%
Expected life (range in years)	4.0	4.0
Fair value per share at grant date	\$0.94	\$2.76

	Six months ended June 30,	
	2005	2004
Expected volatility	61.0%	63.0%
Risk free interest rate	3.7%	2.7%
Dividend yield	0.0%	0.0%
Expected life (range in years)	4.0	4.0
Fair value per share at grant date	\$0.96	\$3.23

The Company's pro forma net loss applicable to common shares, and pro forma net loss per common share, basic and diluted, if the Company had used the fair value method would have been as follows (dollars in thousands, except per share data):

	Three months ended June 30,	
	2005	2004
Net loss applicable to common shares, as reported	\$(32,652)	\$(43,820)
Add: Stock-based employee compensation expense included in net loss, as reported	45	97
Deduct: Total stock-based employee compensation expense determined under fair value based methods for all stock awards	(1,776)	(2,227)
Pro forma net loss applicable to common shares	<u>\$(34,383)</u>	<u>\$(45,950)</u>
Net loss per common share, basic and diluted — as reported	<u>\$ (0.18)</u>	<u>\$ (0.31)</u>
Net loss per common share, basic and diluted — pro forma	<u>\$ (0.19)</u>	<u>\$ (0.33)</u>

	Six months ended June 30,	
	2005	2004
Net loss applicable to common shares, as reported	\$(78,607)	\$(92,314)
Add: Stock-based employee compensation expense included in net loss, as reported	111	226
Deduct: Total stock-based employee compensation expense determined under fair value based methods for all stock awards	(3,422)	(4,101)
Pro forma net loss applicable to common shares	<u>\$(81,918)</u>	<u>\$(96,189)</u>
Net loss per common share, basic and diluted — as reported	<u>\$ (0.43)</u>	<u>\$ (0.67)</u>
Net loss per common share, basic and diluted — pro forma	<u>\$ (0.45)</u>	<u>\$ (0.70)</u>

The XO Communications, Inc. 2002 Stock Incentive Plan (the "2002 Stock Incentive Plan") was adopted in

January 2003 and amended and restated in July 2003. Under the 2002 Stock Incentive Plan, the Company is authorized to issue awards for up to 17.6 million shares of its common stock in the form of restricted stock or options to purchase stock. The Company granted a total of 195,000 options during the three months ended June 30, 2005. The Company granted a total of 342,500 options during the six months ended June 30, 2005.

Comprehensive Loss

Comprehensive loss includes the Company's net loss applicable to common shares, as well as net unrealized gains and losses on available-for-sale investments. The following table reflects the Company's calculation of comprehensive loss for the three and six months ended June 30, 2005 and 2004 (dollars in thousands):

	Three Months Ended June 30,	
	2005	2004
Net loss applicable to common shares	\$(32,652)	\$(43,820)
Other comprehensive loss:		
Net unrealized (losses) gains on investment	(1,220)	1,627
Comprehensive loss	<u>\$(33,872)</u>	<u>\$(42,193)</u>
	Six Months Ended June 30,	
	2005	2004
Net loss applicable to common shares	\$(78,607)	\$(92,314)
Other comprehensive loss:		
Net unrealized (losses) gains on investment	(2,780)	3,021
Reclassification adjustment for gain included in net income	(532)	—
Comprehensive loss	<u>\$(81,919)</u>	<u>\$(89,293)</u>

Long-Lived Assets

Long-lived assets include property and equipment, broadband wireless licenses, and intangible assets to be held and used. Long-lived assets, excluding intangible assets with indefinite useful lives, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount should be addressed pursuant to Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," ("SFAS No. 144"). The criteria for determining impairment for such long-lived assets to be held and used is determined by comparing the carrying value of these long-lived assets to management's best estimate of future undiscounted cash flows expected to result from the use of the assets. The Company believes that no impairment existed under SFAS No. 144 as of June 30, 2005. In the event that there are changes in the planned use of the Company's long-lived assets or its expected future undiscounted cash flows are reduced significantly, the Company's assessment of its ability to recover the carrying value of these assets under SFAS No. 144 could change.

Intangible assets with indefinite useful lives are tested for impairment annually during the fourth quarter, or more frequently if an event indicates that the asset might be impaired, in accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"). XO retained independent appraisers to perform a preliminary valuation of its assets and liabilities as of December 31, 2004. This valuation was necessary as XO's fair value, as determined by its stock price, was less than its book value. Based on this preliminary valuation, XO recorded a \$212.5 million non-cash impairment charge on its goodwill during the year ended December 31, 2004. A full valuation was completed in the first quarter of 2005. There were no changes to the estimate of the impairment recorded in the fourth quarter of 2004.

Recent Accounting Pronouncements

Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123R"), was issued in December 2004. Once effective, this statement will require entities to recognize compensation cost for all equity-classified awards granted, modified or settled after the effective date using a fair-value measurement method. In addition, public companies will recognize compensation expense for the unvested portion of awards outstanding as of the effective date based on their grant-date fair value as calculated under the

original provisions of SFAS No. 123. The effective date for XO is the fiscal year beginning January 1, 2006. The amount of compensation expense that XO records after the adoption of SFAS No. 123R in 2006 and beyond will depend on the amount, timing and pricing of stock option grants.

2. MARKETABLE SECURITIES AND OTHER INVESTMENTS

The amortized cost, gross unrealized gains and losses and fair value of the equity securities available-for-sale as of June 30, 2005 and December 31, 2004, are in the following table. Other investments as of June 30, 2005 and December 31, 2004 consist of investments in the debt of McLeodUSA, Inc. (dollars in thousands):

	<u>Fair Value</u>	<u>Cost Basis</u>	<u>Gross Unrealized Holding Gains</u>	<u>Gross Unrealized Holding (Losses)</u>
As of June 30, 2005				
Equity securities	\$ 2,940	\$ 1,540	\$ 1,400	\$ —
Other investments	<u>6,515</u>	<u>6,515</u>	<u>—</u>	<u>—</u>
Total marketable securities and other investments	<u>\$ 9,455</u>	<u>\$ 8,055</u>	<u>\$ 1,400</u>	<u>\$ —</u>
As of December 31, 2004				
Equity securities	\$ 6,417	\$ 1,705	\$ 4,712	\$ —
Other investments	<u>10,883</u>	<u>10,883</u>	<u>—</u>	<u>—</u>
Total marketable securities and other investments	<u>\$17,300</u>	<u>\$12,588</u>	<u>\$ 4,712</u>	<u>\$ —</u>

3. LONG-LIVED ASSETS

XO's long-lived assets include property and equipment, broadband wireless licenses, and identifiable intangible assets to be held and used.

Property and Equipment

Property and equipment consisted of the following components (dollars in thousands):

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
Telecommunications networks and acquired bandwidth	\$ 711,296	\$ 675,844
Furniture, fixtures, equipment, leasehold improvements and other	<u>251,547</u>	<u>236,788</u>
	962,843	912,632
Less: accumulated depreciation	<u>(298,873)</u>	<u>(208,032)</u>
	663,970	704,600
Construction-in-progress and undeployed assets	<u>100,759</u>	<u>115,936</u>
	<u>\$ 764,729</u>	<u>\$ 820,536</u>

Depreciation expense for the three and six months ended June 30, 2005 was \$48.9 million and \$95.2 million, respectively, and for the three and six months ended June 30, 2004 was \$22.8 million and \$42.0 million, respectively. Assets classified as construction-in-progress and undeployed assets are not being depreciated as they have not yet been placed in service. During the three and six months ended June 30, 2005, XO capitalized interest on construction costs of \$0.8 million and \$1.8 million, respectively and for the three and six months ended June 30, 2004 capitalized interest of \$1.0 million and \$1.9 million, respectively.

Broadband Wireless Licenses and Other Intangibles

Broadband wireless licenses and other intangible assets consisted of the following components (dollars in thousands):

	June 30, 2005	December 31, 2004
Broadband wireless licenses	\$ 59,508	\$ 59,508
Customer relationships	112,366	112,366
Internally developed technology	9,521	9,521
Acquired trade names	5,673	5,673
	<u>187,068</u>	<u>187,068</u>
Less: accumulated amortization	(88,163)	(63,864)
	<u>98,905</u>	<u>123,204</u>
XO Trade name — indefinite life asset	16,662	16,662
	<u>\$115,567</u>	<u>\$139,866</u>

Amortization expense related to intangible assets for each of the three and six months ended June 30, 2005 was \$12.2 million and \$24.3 million, respectively and for each of the three and six months ended June 30, 2004 was \$7.2 million and \$13.8 million, respectively.

4. LONG-TERM DEBT

The Company has a secured credit facility (the "Credit Facility") which matures on July 15, 2009. There are no additional borrowings available under the Credit Facility. At June 30, 2005, more than 90% of the underlying loans of the Credit Facility are held by an entity controlled by Mr. Carl C. Icahn, Chairman of the Company's Board of Directors ("Mr. Icahn"). At June 30, 2005, long-term debt consisted of \$376.8 million in principal and \$5.9 million of accrued interest that, if not paid, converts to principal. There are no current debt service requirements since cash interest payments as well as automatic and permanent quarterly reductions on the principal amount outstanding do not commence until 2009. However, in the event that consolidated excess cash flow (as defined in the Credit Facility) for any fiscal quarter during the term of the agreement is greater than \$25.0 million, at the request of the lender, the Company will pay an amount equal to 50% of such excess cash flow greater than \$25.0 million toward the reduction of outstanding indebtedness. In addition, if the ratio of XO's consolidated earnings before interest, taxes, depreciation and amortization ("EBITDA") to consolidated interest expense for four consecutive quarters exceeds 4:1, XO would be required to pay cash interest, unless waived by the lenders. The Company can elect to begin paying interest in cash prior to the required date. Loans under the Credit Facility bear interest, at the Company's option, at an alternate base rate, as defined, or a Eurodollar rate plus, in each case, applicable margins. Once the Company begins to pay accrued interest in cash, the applicable margins are reduced. At June 30, 2005, the annualized weighted average interest rate applicable to outstanding borrowings under the Credit Facility was 8.9%.

The security for the Credit Facility consists of all assets of XO including the stock of its direct and indirect subsidiaries, and substantially all the assets of those subsidiaries. The Credit Facility limits additional indebtedness, liens, dividend payments and certain investments and transactions, and contains certain covenants with respect to EBITDA requirements, as the term EBITDA is defined in the Credit Facility, and maximum capital expenditures. The Company was required to achieve a minimum consolidated EBITDA of not less than \$135.0 million for the twelve-month period ended June 30, 2005. The Company is also required under the terms of the Credit Facility to maintain an unrestricted cash balance of \$25 million at the end of each fiscal quarter.

In May of 2005, XO obtained a waiver of compliance with the minimum consolidated EBITDA covenant (the "Waiver") contained in the Credit Facility through December 31, 2006. The Waiver was obtained from the affiliate of Mr. Icahn which holds a majority of the Company's loans outstanding under that agreement. In connection with the Waiver, XO agreed that in the event of a sale of the Company and in the event of other significant sale or divestiture transactions, it will prepay all amounts outstanding under the Credit Facility in cash and offer to repurchase outstanding shares of XO's preferred stock at their liquidation value accrued through the date of redemption for cash or, in certain events, securities. The affiliate of Mr. Icahn which holds a majority of such Preferred Stock agreed to accept that offer, to the extent it consists of cash.

In the event that the Company is not in compliance with the minimum consolidated EBITDA covenant when the Waiver expires, there can be no guarantee that the Company will be able to obtain another waiver.

5. RELATED PARTY TRANSACTIONS

Various entities controlled by Mr. Icahn hold the following interests in XO:

	<u>Outstanding Common Stock</u>	<u>Series A, B and C Warrants</u>	<u>Credit Facility</u>	<u>Preferred Stock</u>
At December 31, 2004	Greater than 50%	Greater than 40%	Greater than 90%	95%
At June 30, 2005	Greater than 50%	Greater than 40%	Greater than 90%	95%

As a result of his majority ownership, Mr. Icahn can elect all of our directors, appoint the members of the committees of our Board of Directors, appoint key members of our executive management team, and appoint our auditors. Currently, Mr. Icahn is Chairman of the Board of Directors and three employees of Icahn Associates also sit on the Board of Directors and various Committees of the Board of Directors. Under applicable law and XO's Certificate of Incorporation and by-laws, certain actions cannot be taken without the approval of holders of a

majority of our voting stock, including, without limitation, mergers, acquisitions, the sale of substantially all our assets, and amendments to our Certificate of Incorporation and by-laws.

Mr. Icahn, through various entities that he owns or controls, has the right to require XO to register, under the Securities Act of 1933, shares of XO's Common Stock held by such entities and to include shares of XO's Common Stock held by them in certain registration statements filed by XO.

The Company provides certain telecommunications services to companies affiliated with Mr. Icahn. The total revenue recognized on such services for the three months ended June 30, 2005 and 2004 was \$1.2 million and \$0.5 million, respectively. The total revenue recognized on such services for the six months ended June 30, 2005 and 2004 was \$2.3 million and \$0.7 million, respectively.

During the three months ended June 30, 2005 and 2004, the Company purchased approximately \$0.3 million and \$0.1 million, respectively, in services from Icahn affiliates. During the six months ended June 30, 2005 and 2004, the Company purchased approximately \$0.6 million and \$0.4 million, respectively, in services from Icahn affiliates.

During the three months ended June 30, 2005 and 2004, the Company purchased approximately \$0.5 million and \$0.1 million, respectively in hardware and services from Dell Computers, Inc. During the six months ended June 30, 2005 and 2004, the Company purchased approximately \$0.6 million and \$0.2 million, respectively, in hardware and services from Dell Computers, Inc. Mr. Adam Dell, an XO director, is the brother of Mr. Michael Dell, the Chairman of Dell Computers, Inc.

6. COMMITMENTS AND CONTINGENCIES

Legal Proceedings

XO is involved in lawsuits, claims, investigations and proceedings consisting of commercial, securities, tort, and employment matters, which arise in the ordinary course of business. In accordance with Statement of Financial Accounting Standards 5, "Accounting for Contingencies," XO makes a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. XO believes it has adequate provisions for any such matters. XO reviews these provisions at least quarterly and adjusts these provisions to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel, and other information and events pertaining to a particular case. Litigation is inherently unpredictable. However, XO believes that it has valid defenses with respect to legal matters pending against it. Nevertheless, it is possible that cash flows or results of operations could be materially and adversely affected in any particular period by the unfavorable resolution or disposition of one or more of these contingencies.

Allegiance Telecom Liquidating Trust Litigation

Subsequent to the Closing Date, the Unacquired Businesses as well as the ongoing Allegiance bankruptcy claims were transferred from Allegiance to the Allegiance Telecom Liquidating Trust (the "ATLT"). XO filed an administrative claim with the Bankruptcy Court in August 2004 against the ATLT, for at least approximately \$40 million under the Purchase Agreement and other agreements between the parties, relating to a variety of actions allegedly taken by Allegiance and the ATLT. Subsequently, XO informed the ATLT that the amount in dispute approximates \$50 million. The ATLT has asserted a counterclaim alleging that it is owed approximately \$100 million in respect to operating, working capital and other disputes that have arisen between the parties. XO is vigorously trying its claim and believes that the ATLT's counterclaim is frivolous and without merit. As of June 30, 2005, XO had \$8.0 million recorded in other assets, net related to certain payments made by XO on behalf of the Unacquired Businesses that XO believes is reimbursable by the ATLT. Other than this amount, the accompanying

financial statements do not include any impact from the litigation. The case went to trial on May 2, 2005 and has not yet been decided.

Prior to the acquisition of the Acquired Businesses, XO purchased \$92.5 million in face value of unsecured Allegiance debt securities (the "Claim"). Consequently, XO is a claimant in Allegiance's bankruptcy. It is difficult to assess how much of the Claim XO will recover, or when the recovery will be paid. This assessment could change based upon the total amount of claims the ATLT is directed to pay, the amount of administrative costs that it incurs, and the value of its assets, including 45.4 million shares of XO's common stock. The estimated fair value of the Claim of approximately \$26.1 million is recorded in other assets in the Condensed Consolidated Balance Sheets as of June 30, 2005.

Telecom of Nevada Litigation

Start Investments Inc. (“Start”) is XOC’s 10% minority partner in Telecommunications of Nevada (“TON”), a Nevada joint venture company whose results of operations are consolidated into the accompanying financial statements. XOC and Start hold promissory notes (“the Notes”) from TON for \$63.5 million (the “XOC Note”) and \$7.1 million (the “Start Note”), respectively. The Notes became due in December 2002 and were not paid or extended on that date, but cannot be accelerated or foreclosed upon without the consent of XOC, which XOC has declined to give, acting in what it believes are the best interests of TON. TON has paid current interest on the Notes to both holders, but at the historic rate of interest, not the higher default rate. Start filed a suit against TON and XOC in October of 2003, which alleged that XOC had tortiously interfered with Start’s contractual relations with TON and breached its duty of good faith and fair dealing. The suit seeks temporary injunctive and declaratory relief, as well as damages of approximately \$9.0 million, consisting primarily of the principal amount of the Start Note and interest at the default rate. In July 2005, Start moved to amend its complaint to add a claim against TON for breach of contract for failure to pay the Start Note. XOC believes it has valid defenses to the claims raised by Start and to its purported calculation of any damages. However, in the event that TON is required to pay the full principal amount of the Notes, absent a negotiated, out-of-court financial restructuring, TON may be forced to seek protection under chapter 11 of the Federal Bankruptcy Code, which could trigger a default on the Credit Facility of the Company.

The XOC Note and the accrued interest payable from TON to XOC, and the related note and interest receivable of XOC from TON, are inter-company balances and, in accordance with the principles of consolidation discussed in Note 1, have been eliminated in the consolidation of the financial statements. The Start Note and the related accrued interest payable, totaling approximately \$8.3 million, are included in other current liabilities in the accompanying Condensed Consolidated Balance Sheet.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-looking and Cautionary Statements

Some statements and information contained in this document are not historical facts, but are "forward-looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by the use of forward-looking terminology such as "believes," "expects," "plans," "may," "will," "would," "could," "should," or "anticipates" or the negative of these words or other variations of these words or other comparable words, or by discussions of strategy that involve risks and uncertainties. Such forward-looking statements include, but are not limited to, statements regarding:

- our services, including the development and deployment of data products and services based on IP, Ethernet and other technologies and strategies to expand our targeted customer base and broaden our sales channels;
- the operation of our network and back office systems, including with respect to the development of IP protocols;
- liquidity and financial resources, including anticipated capital expenditures, funding of capital expenditures and anticipated levels of indebtedness;
- trends related to and expectations regarding the results of operations in future periods, including but not limited to those statements set forth in Management's Discussion and Analysis of Financial Condition and Results of Operations below; and
- the impact of judicial decisions, legislation, and regulatory developments on our cost structure, services, and marketing initiatives.

All such forward-looking statements are qualified by the inherent risks and uncertainties surrounding expectations generally and also may materially differ from our actual experience involving any one or more of these matters and subject areas. The operation and results of our business also may be subject to the effect of other risks and uncertainties in addition to the relevant qualifying factors identified in the "Liquidity Assessment" discussions set forth below and the "Risks and Uncertainties" discussion and the "Risk Factors" section of our 2004 Annual Report, including, but not limited to:

- general economic conditions in the geographic areas that we are targeting for the sale of telecommunications services;
- the ability to achieve and maintain market penetration and average per customer revenue levels sufficient to provide financial viability to our business;
- the quality and price of similar or comparable telecommunications services offered, or to be offered, by our current or future competitors; and
- future telecommunications-related legislation or regulatory developments and the conduct of incumbent carriers in reaction to such developments.

Management Overview

We provide a comprehensive array of telecommunications services to business customers. We provide our services, including local and long distance voice using both traditional delivery methods and Voice over Internet Protocol, or VoIP, Internet access, private data networking and hosting services, through our national

telecommunications network, which consists of more than 9,000 route miles of fiber optic lines connecting 953 unique Incumbent Local Exchange Carrier, or ILEC, end-office collocations in 37 U.S. cities. In addition, we own licenses to deliver telecommunications services via local multipoint distribution service, or LMDS, wireless spectrum in 75 U.S. cities. We market our services primarily to business customers, ranging from small and medium businesses to Fortune 500 companies to carrier and wholesale customers. Our services offer an effective telecommunications solution for nearly any business, and our national telecommunications network is particularly advantageous to multi-location businesses that desire to improve telecommunications among their locations, whether within a single metropolitan area or across the country.

To serve our customers' broad telecommunications needs, we operate a network comprised of a series of rings of fiber optic cables located in the central business districts of numerous metropolitan areas, which we refer to as metro fiber networks, that are connected primarily by a network of numerous dedicated wavelengths of transmission capacity on fiber optic cables, which we refer to as an intercity network. By integrating these networks with advanced telecommunications technologies, we are able to provide a comprehensive array of telecommunications services primarily or entirely over a network that we own or control, from the initiation of the voice or data transmission to the point of termination, which we refer to as end-to-end service. This capability enables us to provide telecommunications services between customers connected to our network and among customers with multiple locations primarily or entirely over our network.

With the acquisition of Allegiance Telecom, Inc.'s, or Allegiance's, network assets and customer base, which we refer to as the Acquired Businesses, in June 2004, we became one of the nation's largest competitive providers of national local telecommunications and broadband services. We own one of the largest networks of nationwide connections to the Regional Bell Operating Companies', or RBOCs', networks, and doubled our Points of Presence (PoPs) within the 36 metropolitan areas where both XO and Allegiance operated. We believe that this extensive network will allow the combined company to (i) improve delivery of service to customers, (ii) improve operating results, and (iii) improve our ability to compete with other companies in the nationwide local telecommunications services market.

Management uses certain key performance indicators, or KPIs, to assess operational effectiveness of the business, including:

- Gross Margin
- Sales, Operating and General Expenses as a Percentage of Revenue
- EBITDA

The following table outlines the measurements of these KPIs as a percentage of revenue for the second quarter of 2005 and 2004:

	Three Months Ended June 30,	
	2005	2004
Gross margin	61.9%	57.3%
EBITDA	10.6%	(3.1%)
Sales, operating & general expenses	51.8%	59.0%

	Six Months Ended June 30,	
	2005	2004
Gross margin	60.5%	57.6%
EBITDA	8.3%	(4.9%)
Sales, operating & general expenses	52.4%	61.7%

Management believes that EBITDA and gross margin are measures of operating performance and liquidity that reflect the ongoing effectiveness of management's sales, cost reduction, and acquisition initiatives. Sales, operating and general expense is an important measure of the efficiency with which we sell, provision and support our services, and the efficiency of our back office operations. See the further discussion of EBITDA and gross margin in the Comparison of Financial Results section below.

As discussed further under the heading “Critical Accounting Policies and Estimates”, the company settled certain billing disputes with telecommunications service providers in the first and second quarter of 2005, which resulted in a reduction of cost of service of approximately \$10.0 million and \$10.5 million, respectively. Additionally, in the second quarter of 2005, we revised estimates related to liabilities assumed in relation to the Acquired Businesses. These revisions resulted in a reduction to cost of service of \$3.9 million. These settlements and estimate revisions contributed significantly to the improvements in the gross margin and EBITDA KPIs discussed above.

Recent Events

In March 2005, we retained Jefferies & Company, Inc. (“Jefferies”) to present strategic alternatives based on, among other things, the competitive environment of the telecommunications industry, the current regulatory environment, and the recent and pending mergers and acquisitions in our industry. We have received the Jefferies report, which addressed potential operational improvements, disposition and financing possibilities, and in May 2005, we retained Jefferies to assist us in exploring our strategic alternatives.

On April 18, 2005, we launched the Company’s initial Voice over Internet Protocol, or VoIP, product, named XOptions Flex, in 45 major metropolitan markets which includes more than 1,000 cities nationwide. We later expanded the product offering to two additional markets. VoIP enables customers to utilize “dynamic bandwidth allocation” to maximize the utilization of their bandwidth by allocating it for data applications during periods when voice lines are idle. XOptions Flex bundles unlimited local and long distance calling, dedicated Internet access and web hosting services for a flat monthly price. In July of 2005, we signed the 1000th order of the XOptions Flex bundle package.

We have also begun to provide fixed broadband wireless backhaul services to mobile wireless telecommunications carriers using our LMDS spectrum. In April 2005, we reached an agreement to provide fixed broadband wireless services on a limited basis to one of the national mobile wireless carriers. We will continue to pursue opportunities to market and sell our fixed wireless solution to mobile wireless carriers both for primary network connectivity and redundancy and are exploring market opportunities to use this spectrum to provide local transport services to other major enterprise customers. We also plan to offer customers an LMDS-based wireless transport solution that would aggregate data traffic onto Ethernet and other higher speed wireless paths.

Results of Operations

The operational results of XO for the three and six months ended June 30, 2005 are discussed below. As the acquisition of the Acquired Businesses closed on June 23, 2004, or the Closing Date, our consolidated results of operations include the Acquired Businesses from the Closing Date through June 30, 2005. Forward looking information with respect to consolidated XO is discussed at the end of each financial results analysis. Our actual experience may differ materially from our projections of the combined company based on many factors including, among others:

- the inherent uncertainties in projecting future results for any business;
- the inability to predict the outcome of future judicial decisions, telecommunications related legislation or regulatory decisions, or the reaction by incumbent carriers to such developments.

Three and Six Months Ended June 30, 2005 versus the Three and Six Months Ended June 30, 2004

The following table contains certain data from our unaudited consolidated and condensed statement of operations presented in thousands of dollars and expressed as a percentage of total revenue. The information in this table should be read in conjunction with our consolidated and condensed financial statements, including the notes thereto, appearing elsewhere in this report (amounts in thousands, except for share and per share data):

	Three Months Ended June 30,		2004	
	2005		2004	
Revenue	\$ 362,164	100.0%	\$ 278,183	100.0%
Costs and expenses:				
Cost of service (exclusive of depreciation and amortization)	138,024	38.1%	118,822	42.7%
Selling, operating and general	187,772	51.8%	164,149	59.0%
Depreciation and amortization	61,097	16.9%	30,065	10.8%
Total costs and expenses	386,893	106.8%	313,036	112.5%
Loss from operations	(24,729)	(6.8%)	(34,853)	(12.5%)
Interest income	1,919	0.5%	841	0.3%
Investment gain (loss)	1,891	0.5%	(3,962)	(1.4%)
Interest expense, net	(8,588)	(2.4%)	(5,846)	(2.1%)
Net loss	\$ (29,507)	(8.1%)	\$ (43,820)	(15.8%)
Preferred stock accretion	(3,145)	(0.9%)	—	—%
Net loss applicable to common shares	\$ (32,652)	(9.0%)	\$ (43,820)	(15.8%)
Net loss per common share, basic and diluted	(0.18)		(0.31)	
Weighted average shares outstanding, basic and diluted	181,933,035		140,538,159	
Gross margin (1)	224,140	61.9%	159,361	57.3%
EBITDA (2)	38,259	10.6%	(8,750)	(3.1%)

	Six Months Ended June 30,			
	2005		2004	
Revenue	\$ 723,669	100.0%	\$ 539,128	100.0%
Costs and expenses:				
Cost of service (exclusive of depreciation and amortization)	285,947	39.5%	228,783	42.4%
Selling, operating and general	379,466	52.4%	332,702	61.7%
Depreciation and amortization	119,461	16.5%	55,762	10.3%
Total costs and expenses	784,874	108.5%	617,247	114.5%
Loss from operations	(61,205)	(8.5%)	(78,119)	(14.5%)
Interest income	3,820	0.5%	2,546	0.5%
Investment gain (loss)	1,612	0.2%	(4,291)	(0.8%)
Interest expense, net	(16,592)	(2.3%)	(12,450)	(2.3%)
Net loss	\$ (72,365)	(10.0%)	\$ (92,314)	(17.1%)
Preferred stock accretion	(6,242)	(0.9%)	—	—%
Net loss applicable to common shares	\$ (78,607)	(10.9%)	\$ (92,314)	(17.1%)
Net loss per common share, basic and diluted	(0.43)		(0.67)	
Weighted average shares outstanding, basic and diluted	181,933,035		137,591,467	
Gross margin (1)	437,722	60.5%	310,345	57.6%
EBITDA (2)	59,868	8.3%	(26,648)	(4.9%)

- (1) Gross margin is defined as revenue less cost of service, and excludes depreciation and amortization. Gross margin is not intended to replace operating income (loss), net income (loss), cash flow and other measures of financial performance reported in accordance with generally accepted accounting principles in the United States. Rather, gross margin is an important measure used by management to assess operating performance of the Company. Additionally, we believe that gross margin is a standard measure of operating performance that is commonly reported and widely used by analysts, investors, and other interested parties in the telecommunications industry. Gross margin as used in this document may not be comparable to similarly titled measures reported by other companies due to differences in accounting policies. A reconciliation between gross margin and net loss is as follows:

	Three Months Ended June 30,	
	2005	2004
Net loss	\$ (29,507)	\$ (43,820)
Selling, operating and general	187,772	164,149
Interest income	(1,919)	(841)
Investment (gain) loss, net	(1,891)	3,962
Interest expense, net	8,588	5,846
Depreciation and amortization	61,097	30,065
Gross margin	<u>\$224,140</u>	<u>\$159,361</u>

	Six Months Ended June 30,	
	2005	2004
Net loss	\$ (72,365)	\$ (92,314)
Selling, operating and general	379,466	332,702
Interest income	(3,820)	(2,546)
Investment (gain) loss, net	(1,612)	4,291
Interest expense, net	16,592	12,450
Depreciation and amortization	119,461	55,762
Gross margin	<u>\$437,722</u>	<u>\$310,345</u>

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- (2) EBITDA is defined as net income or loss before depreciation, amortization, interest expense, and interest income. EBITDA is not intended to replace operating income (loss), net income (loss), cash flow and other measures of financial performance reported in accordance with generally accepted accounting principles in the United States. Rather, EBITDA is an important measure used by management to assess operating performance of the company. EBITDA as used in this document may not be comparable to similarly titled measures reported by other companies due to differences in accounting policies. Additionally, EBITDA as defined here does not have the same meaning as EBITDA as defined in our secured credit facility agreement. A reconciliation between EBITDA and net loss is as follows:

	Three Months Ended June 30,	
	2005	2004
Net loss	<u>\$ (29,507)</u>	<u>\$ (43,820)</u>
Interest income	(1,919)	(841)
Interest expense, net	8,588	5,846
Depreciation and amortization	<u>61,097</u>	<u>30,065</u>
EBITDA	<u>\$ 38,259</u>	<u>\$ (8,750)</u>

	Six Months Ended June 30,	
	2005	2004
Net loss	<u>\$ (72,365)</u>	<u>\$ (92,314)</u>
Interest income	(3,820)	(2,546)
Interest expense, net	16,592	12,450
Depreciation and amortization	<u>119,461</u>	<u>55,762</u>
EBITDA	<u>\$ 59,868</u>	<u>\$ (26,648)</u>

Revenue. Total revenue for the three months ended June 30, 2005 increased 30.2% to \$362.2 million from \$278.2 million for the same period in 2004. Revenue for the six months ended June 30, 2005 increased 34.2% to \$723.7 million from \$539.1 million for the same period in 2004. Substantially all of the increase is attributable to the inclusion of the Acquired Businesses in the results for the three and six months ended June 30, 2005.

We believe that revenue for the remainder of 2005 will remain flat relative to the second quarter of 2005 results.

Revenue was earned from providing the following services (dollars in thousands):

	Three months ended June 30,				
	2005	% of Revenue	2004	% of Revenue	% Change
Voice services	\$188,498	52.0%	\$141,679	50.9%	33.0%
Data services	107,779	29.8%	95,612	34.4%	12.7%
Integrated voice and data services	<u>65,887</u>	<u>18.2%</u>	<u>40,892</u>	<u>14.7%</u>	61.1%
Total revenue	<u>\$362,164</u>	<u>100.0%</u>	<u>\$278,183</u>	<u>100.0%</u>	30.2%
	Six months ended June 30,				
	2005	% of Revenue	2004	% of Revenue	% Change
Voice services	\$374,797	51.8%	\$272,600	50.5%	37.5%
Data services	216,171	29.9%	188,561	35.0%	14.6%
Integrated voice and data services	<u>132,701</u>	<u>18.3%</u>	<u>77,967</u>	<u>14.5%</u>	70.2%
Total revenue	<u>\$723,669</u>	<u>100.0%</u>	<u>\$539,128</u>	<u>100.0%</u>	34.2%

Voice services revenue includes revenue from local and long distance voice services, prepaid calling card

processing, interactive voice response services, stand-alone long distance services and other voice telecommunications based services. For the three and six months ended June 30, 2005, revenue from voice services increased \$46.8 million or 33.0% and \$102.2 million or 37.5% as compared to the same periods in 2004. Substantially all of the increase is attributable to the inclusion of the Acquired Businesses in the results for the three and six months ended June 30, 2005.

Data services revenue includes revenue from Internet access, network access and web hosting services. For the three and six months ended June 30, 2005, revenue from data services increased \$12.2 million or 12.7% and \$27.6 million or 14.6% as compared to the same periods in 2004. Substantially all of the increase is attributable to the inclusion of the Acquired Businesses in the results for the three and six months ended June 30, 2005.

Integrated voice and data services revenue includes revenue from our XOptions, XOptions Flex and Total Communications service offerings, XO's flat-rate bundled packages offering a combination of voice and data services and integrated access. For the three and six months ended June 30, 2005, revenue from integrated voice and data services increased \$25.0 million or 61.1% and \$54.7 million or 70.2% as compared to the same periods in 2004. Substantially all of the increase is attributable to the inclusion of the Acquired Businesses in the results for the three months ended June 30, 2005.

Costs and expenses. The table below provides costs and expenses by classification and as a percentage of revenue (dollars in thousands).

	Three months ended June 30,		Three months ended June 30,		
	2005	% of Revenue	2004	% of Revenue	% Change
Costs and expenses:					
Cost of service (excluding depreciation and amortization)	\$138,024	38.1%	\$118,822	42.7%	16.2%
Selling, operating and general	187,772	51.8%	164,149	59.0%	14.4%
Depreciation and amortization	<u>61,097</u>	<u>16.9%</u>	<u>30,065</u>	<u>10.8%</u>	<u>103.2%</u>
Total	<u>\$386,893</u>		<u>\$313,036</u>		23.6%

	Six months ended June 30,		Six months ended June 30,		
	2005	% of Revenue	2004	% of Revenue	% Change
Costs and expenses:					
Cost of service (excluding depreciation and amortization)	\$285,947	39.5%	\$228,783	42.4%	25.0%
Selling, operating and general	379,466	52.4%	332,702	61.7%	14.1%
Depreciation and amortization	<u>119,461</u>	<u>16.5%</u>	<u>55,762</u>	<u>10.3%</u>	<u>114.2%</u>
Total	<u>\$784,874</u>		<u>\$617,247</u>		27.2%

Cost of service (exclusive of depreciation and amortization). Cost of service includes expenses directly associated with providing telecommunications services to our customers. Cost of service includes, among other items, the cost of connecting customers to our network via leased facilities, the costs of leasing components of our network facilities and costs paid to third party service providers for interconnect access and transport services. Cost of service as a percentage of revenue for the three and six months ended June 30, 2005 decreased as compared to the same periods in 2004, primarily due to \$20.5 million in settlements with two telecommunications service providers, \$10.5 million of which was recorded during the three months ended June 30, 2005 and \$10.0 million of which was recorded during the three months ended March 31, 2005. Additionally, in the second quarter of 2005, we revised estimates related to liabilities assumed in relation to the Acquired Businesses. These revisions resulted in a reduction to cost of service of \$3.9 million. We originally estimated a potential benefit of approximately \$60.0 million in pro forma annualized network synergies for the combined companies if our integration efforts with the Acquired Businesses were successful. We have made substantial progress integrating the two companies and are on plan to reach our synergy targets.

We believe that, excluding the settlements and estimate revisions referenced above, cost of service as a percentage of revenue for the remainder of 2005 will remain stable to slightly down relative to the second quarter of 2005 results. Cost of service will be adversely impacted due to the recently enacted regulatory rules on unbundled network

element, or UNE, loop and transport rates as discussed in the “Regulatory Overview” section below. The UNE and transport rate increases will be phased in during 2005 and the first quarter of 2006. We expect these increases to have a total annualized impact, including transitional and special access rates, of approximately \$85 million by the end of the first quarter of 2006. However, we believe that actions we are taking, including negotiating rate reductions, network optimization, and price increases to our customers, will offset these increases.

Selling, operating and general. Selling, operating and general expense includes expenses related to network maintenance, sales and marketing, network operations and engineering, information systems, general corporate office functions and collection risks. Selling, operating and general expense for the three months ended June 30, 2005 was \$187.8 million or 51.8% of revenue compared to \$164.1 million or 59.0% of revenue for the three months ended June 30, 2004. Selling, operating and general expense for the six months ended June 30, 2005 was \$379.5 million or 52.4% of revenue compared to \$332.7 million or 61.7% of revenue for the six months ended June 30, 2004. The improvements as a percentage of revenue are largely attributable to the synergies obtained through the integration of the Acquired Businesses. We originally estimated a potential benefit of approximately \$100.0 million in pro forma annualized selling, operating and general expense synergies for the combined companies if our integration efforts with the Acquired Businesses were successful. We have completely integrated the administrative functions and have exceeded the estimated annualized synergies.

As discussed further in the section entitled Critical Accounting Policies and Estimates below, selling, operating and general expenses for the three and six months ended June 30, 2005 includes an adjustment of approximately \$8.3 million relating to our accounting for leases.

We believe that selling, operating and general expense will remain stable or decrease slightly as a percentage of revenue during the remainder of 2005 as compared to the second quarter of 2005 results.

Depreciation and amortization. Depreciation expense was \$48.9 million for the three months ended June 30, 2005, compared to \$22.8 million for the same period in 2004 and \$95.2 million for the six months ended June 30, 2005, compared to \$42.0 million for the same period in 2004. Total amortization expense was \$12.2 million for the second quarter of 2005 and \$7.2 million for the second quarter of 2004 and was \$24.3 million in the first half of 2005 and \$13.7 million in the first half of 2004. Substantially all of the increases in depreciation and amortization are attributable to the acquisition of the Acquired Businesses.

As of June 30, 2005, we had approximately \$100.8 million of fixed assets and \$23.5 million of broadband wireless licenses that have not yet been placed into service and, accordingly, are not currently being depreciated or amortized. We expect depreciation and amortization expense to increase as a percentage of revenue for the remainder of 2005 as we place more fixed wireless licenses into service.

Interest income. Interest income for the three months ended June 30, 2005 increased to \$1.9 million from \$0.8 million for the three months ended June 30, 2004. Interest income for the six months ended June 30, 2005 increased to \$3.8 million from \$2.5 million in the six months ended June 30, 2004. The increase in interest income is due to an increase in the amount of cash and cash equivalents invested and an increase in interest rates.

Investment gain (loss), net. Investment gain (loss), net includes any realized gains or losses from the sale or other than temporary impairment of investments. For the three months ended June 30, 2005 we reported a net investment gain of \$1.9 million while we reported net investment loss of \$4.0 million for the same period of 2004. Investment gain, net for the six months ended June 30, 2005 was \$1.6 million while we had net investment loss of \$4.3 million for the same period in 2004. The improvement is largely attributable to a realized loss on the sale of an investment during the second quarter of 2004.

Interest expense, net. Interest expense, net includes interest expense on debt and capital leases, less any amounts capitalized. The majority of interest expense in the three and six months ended June 30, 2005 and 2004 is non-cash as our secured credit facility allows for accrued interest to be converted into principal if unpaid. Interest expense, net for the three months ended June 30, 2005 and 2004 was \$8.6 million and \$5.8 million, respectively. Interest expense, net for the six months ended June 30, 2005 and 2004 was \$16.6 million and \$12.5 million, respectively. The increase in interest expense is due to an increase in interest rates, as well as the compounding effect of the conversion of accrued interest to principal.

Net Loss. Net loss decreased \$14.3 million to a loss of \$29.5 million for the three months ended June 30, 2005, from a net loss of \$43.8 million for the comparable period in 2004. Net loss decreased \$19.9 million to a loss of \$72.4 million for the six months ended June 30, 2005, from a net loss of \$92.3 million for the comparable period in 2004. The decrease primarily resulted from the achievement of synergies resulting from the integration of the Acquired Businesses, offset by additional depreciation and amortization from the inclusion of the property and equipment and intangibles of the Acquired Businesses. Additionally, we recognized approximately \$24.4 million of reductions in cost of service expenses for the six months ended June 30, 2005 from the settlements and estimate revisions discussed above.

EBITDA. EBITDA increased to \$38.3 million for the three months ended June 30, 2005 from \$(8.7) million for the comparable period in 2004 and increased to \$59.9 million for the six months ended June 30, 2005 from \$(26.6) million for the comparable period in 2004. The increase primarily resulted from the achievement of synergies resulting from the integration of the Acquired Businesses and the settlements and estimate revisions discussed above.

Critical Accounting Policies and Estimates

Our significant accounting policies are more fully described in the notes to the consolidated financial statements in our 2004 Annual Report. The preparation of the condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States requires management to make judgments, estimates and assumptions regarding uncertainties that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities and the reported amounts of revenues and expenses. Management uses historical experience and all available information to make these judgments and estimates and actual results could differ from those estimates and assumptions that are used to prepare our financial statements at any given time. Despite these inherent

limitations, management believes that Management's Discussion and Analysis and the accompanying condensed consolidated financial statements and footnotes provide a meaningful and fair perspective of our financial condition and our operating results for the current period. Management's Discussion and Analysis and Note 3 to the Consolidated Financial Statements in the XO Communications, Inc. Annual Report on Form 10-K for the year ended December 31, 2004 describe the significant estimates and accounting policies used in preparation of the Condensed Consolidated Financial Statements.

During the six months ended June 30, 2005, we resolved certain billing disputes with telecommunications service providers (the "Carriers"). In accordance with our policy for disputed charges, all amounts billed by the Carriers had previously been recorded as a cost of service in our Condensed Consolidated Statement of Operations. Because these disputes were resolved favorably to us, they resulted in a reduction of cost of service of approximately \$10.0 million and \$10.5 million during the first and second quarters of 2005, respectively.

In the second quarter of 2005, in conjunction with a review of certain accounting policies, we determined that we were not applying the proper generally accepted accounting principles to lease escalation provisions contained in certain of our operating leases since our emergence from bankruptcy in January 2003. Additionally, we determined that certain assets had been depreciating over lives inconsistent with our depreciation policy, and that certain leasehold improvements had not been expensed when the related lease contract had been terminated prior to the end of the initial lease term. Accordingly, an adjustment of \$8.3 million was recorded to increase selling, operating and general expenses and other current liabilities, and an adjustment of \$2.5 million was recorded to increase depreciation expense and to reduce Property and Equipment, net during the three months ended June 30, 2005. The impact of these adjustments would have increased selling operating and general expense by approximately \$4.5 million, \$3.3 million, and \$0.5 million for the years ended December 31, 2003, December 31, 2004 and the three months ended March 31, 2005, respectively, and would have increased depreciation expense by approximately \$0.5 million, \$1.0 million, and \$1.0 million for the years ended December 31, 2003, December 31, 2004 and the three months ended March 31, 2005, respectively, had they been recorded in the appropriate periods. We have concluded that the adjustment is immaterial to the financial statements on both a quantitative and qualitative basis for all periods affected. Accordingly, the adjustment has been made in the current period financial statements. The adjustment does not affect our historical or future cash flows or the timing of payments under the relevant leases.

Liquidity and Capital Resources

Capital Resources and Liquidity Assessment

During the three months ended June 30, 2005, our operating activities provided net cash of \$32.2 million, our investing activities used net cash of \$18.0 million and our financing activities used net cash of \$0.7 million. For the six months ended June 30, 2005, our operating activities provided net cash of \$50.4 million, our investing activities used net cash of \$12.8 million, and our financing activities used net cash of \$1.5 million. Our balance of cash and cash equivalents increased to \$270.1 million at June 30, 2005 from \$234.0 million at December 31, 2004.

Our cash flows from operating activities for the six months ended June 30, 2005 were aided by a cash settlement of approximately \$10.0 million with a telecommunications service provider during the first quarter of 2005. Cash used in investing activities for the six months ended June 30, 2005 was aided by the release, during the first quarter of 2005, of approximately \$25.4 million that had previously held in escrow and classified as other current assets in the Condensed Consolidated Balance Sheet.

We project that we will have sustainable positive cash flows by the end of 2005. Our projection is based upon, among other things, our estimated increased costs of service attributable to the recent Triennial Review Remand Order, or TRRO, discussed in the “Regulatory Overview” below, and other projected operating costs that are not entirely under our control. As a result, our projections may be incorrect if our estimates of such costs and expenses are inaccurate.

We have a secured credit facility, or the Credit Facility, which matures on July 15, 2009. There are no additional borrowings available under the Credit Facility. At June 30, 2005, more than 90% of the underlying loans of the Credit Facility are held by an entity controlled by Mr. Carl C. Icahn, Chairman of the Company’s Board of Directors (“Mr. Icahn”). At June 30, 2005, long-term debt consisted of \$376.8 million in principal and \$5.9 million of accrued interest that, if not paid, converts to principal. There are no current debt service requirements since cash interest payments as well as automatic and permanent quarterly reductions on the principal amount outstanding do not commence until 2009. However, in the event that consolidated excess cash flow (as defined in the Credit Facility) for any fiscal quarter during the term of the agreement is greater than \$25.0 million, at the request of the lender, we will pay an amount equal to 50% of such excess cash flow greater than \$25.0 million toward the reduction of outstanding indebtedness. In addition, if the ratio of XO’s consolidated earnings before interest, taxes, depreciation and amortization (“EBITDA”), as defined in the Credit Facility, to consolidated interest expense for four consecutive quarters exceeds 4:1, we would be required to pay cash interest, unless waived by the lenders. We can elect to begin paying interest in cash prior to the required date. Loans under the Credit Facility bear interest, at our option, at an alternate base rate, as defined, or a Eurodollar rate plus, in each case, applicable margins. Once we begins to pay accrued interest in cash, the applicable margins are reduced. At June 30, 2005, the annualized weighted average interest rate applicable to outstanding borrowings under the Credit Facility was 8.9%.

The security for the Credit Facility consists of all of our assets including the stock of our direct and indirect subsidiaries, and substantially all the assets of those subsidiaries. The Credit Facility limits additional indebtedness, liens, dividend payments and certain investments and transactions, and contains certain covenants with respect to EBITDA requirements, as the term EBITDA is defined in the Credit Facility, and maximum capital expenditures. The definition of EBITDA in the Credit Facility differs from the definition of EBITDA discussed in “Results of Operations” above. We were required to achieve a minimum consolidated EBITDA of not less than \$135.0 million for the twelve-month period ended June 30, 2005. We are also required under the terms of the Credit Facility to maintain an unrestricted cash balance of \$25.0 million at the end of each fiscal quarter.

In May of 2005, we obtained a waiver of compliance with the minimum consolidated EBITDA covenant contained in the Credit Facility through December 31, 2006. The waiver was obtained from the affiliate of Mr. Icahn which holds a majority of our loans outstanding under that agreement. In connection with that waiver, we agreed that in the event of a sale of the Company and in the event of other significant sale or divestiture transactions, we will prepay all amounts outstanding under the Credit Facility in cash and offer to repurchase outstanding shares of our preferred stock at their liquidation value accrued through the date of redemption for cash or, in certain events, securities. The affiliate of Mr. Icahn which holds a majority of such Preferred Stock has agreed to accept that offer, to the extent it consists of cash.

In the event that we are not in compliance with the minimum consolidated EBITDA covenant when the waiver expires, there can be no guarantee that we will be able to obtain another waiver.

Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of trade receivables. Although our trade receivables are geographically dispersed and include customers in many different industries, a portion of our revenue is generated from services provided to other telecommunications service providers. We believe that our established valuation and credit allowances are adequate as of June 30, 2005 to cover these risks.

Regulatory Overview

Overview

We are subject to regulation by federal, state and local government agencies. Historically, the Federal Communications Commission, or FCC, had jurisdiction over interstate long distance services and international services, while state regulatory commissions had jurisdiction over local and intrastate long distance services. The

Telecommunications Act of 1996, or the Telecom Act, fundamentally changed the way telecommunications is regulated in this country. The FCC was given a major role in writing and enforcing the rules under which new competitors could compete in the local marketplace. Those rules, coupled with additional rules and decisions promulgated by the various state regulatory commissions, form the core of the regulatory framework under which we operate in providing our services.

With a few limited exceptions, the FCC continues to retain exclusive jurisdiction over our provision of interstate and international long distance services, and the state regulatory commissions regulate our provision of intrastate local and long distance services. Additionally, municipalities and other local government agencies may regulate limited aspects of our business, such as use of government-owned rights-of-way, and may require permits such as zoning approvals and building permits.

The Telecom Act and the related rules governing competition issued by the FCC, as well as pro-competitive policies already developed by state regulatory commissions, have enabled new entrants like us to capture a portion of the ILECs' market share of local services. However, there have been numerous attempts to limit the pro-competitive policies in the local exchange services market through a combination of proposed federal legislation, adoption of new rules by the FCC, and ILEC challenges to existing and proposed regulations. To date, the ILECs have succeeded in eliminating some of the market-opening regulations adopted by the FCC and the states through numerous court challenges. In particular, the ILECs appealed, and won partial reversals of, a series of FCC orders defining the ILEC facilities, known as UNEs, that ILECs must lease to competitors at cost-based rates. We expect the ILEC's efforts to scale back the benefits of the Telecom Act and local service competition to continue. However, while the FCC has eliminated certain UNEs, the basic framework of local competition for facilities-based competitors such as us, has remained intact. The successful implementation of our business plan is predicated on the assumption that the basic competitive framework and pro-competitive safeguards will remain in place.

The passage of the Telecom Act largely preceded the explosive growth of the Internet and Internet Protocol, or "IP", communications. Congress is currently considering whether to further amend the Telecom Act to, among other things, directly address IP communications. It is possible that any such amendment to the Telecom Act could eliminate or materially alter the market-opening regulatory framework of the Telecom Act in general, and the UNE regime in particular. Such a result could adversely affect XO's business. It is not possible to predict if, when, or how the Telecom Act will be amended.

Federal Regulation

The FCC exercises jurisdiction over our telecommunications facilities and services. We have authority from the FCC for the installation, acquisition and operation of our wireline network facilities to provide facilities-based domestic interstate and international services. In addition, we have obtained FCC authorizations for the operation of our LMDS and 39 GHz broadband wireless facilities. Because we are not dominant in any of our markets, unlike ILECs, we are not subject to price cap or rate of return regulation. Thus, our pricing policies for interstate and international end user services are only subject to the federal guidelines that charges for such services be just, reasonable, and non-discriminatory. The FCC allows us to file interstate tariffs for our interstate access services (rates charged by us to other carriers for access to our network). As for domestic interstate and international long distance services, the FCC requires us to make the terms, conditions and rates of the detariffed services available to the public on XO's web page, and such terms, conditions, and rates are located at <http://www.xo.com/legal/>.

Implementation of the Telecom Act

The Telecom Act's Local Competition Framework

One of the key goals of the Telecom Act is to encourage competition in the provision of local telephone service. To do this, the Telecom Act provides three means by which competitive local exchange carriers, or CLECs, such as XO can enter the local telephone service market. The three modes of entry are as follows:

- ***Access to UNEs.*** ILECs are required to lease to CLECs various elements in their network that are used individually or in combination with each other to provide local telephone service. As discussed in more detail below, the FCC determines which facilities must be made available by the ILECs as UNEs. The ILECs must make UNEs available at rates that are based on their forward-looking economic costs, a pricing regime known as “*TELRIC*,” short for Total Element Long Run Incremental Cost. For XO, the most critical UNEs are local loops and transport, which enable us to connect our customers to our network.

- ***Construction of New Facilities.*** CLECs may also enter the local service market by building entirely new facilities. The ILECs are required to allow CLECs to interconnect their facilities with the ILECs' facilities in order to reach all customers.
- ***Resale.*** ILECs are required to permit CLECs to purchase their services for resale to the public at a wholesale rate that is less than the rate charged by the ILECs to their retail customers.

To facilitate competitors' entry into local telephone markets using one or more of these three methods, the Telecom Act imposes on the ILECs the obligation to open their networks and markets to competition. When requested by competitors, ILECs are required to negotiate, in good faith, agreements that set forth terms governing the interconnection of their network, access to UNEs, and resale. We have negotiated interconnection agreements with the ILECs in each of the markets in which we operate. Many of these interconnection agreements are currently being renegotiated.

The following is a summary of the interconnection and other rights granted by the Telecom Act that are important for effective local service competition and our belief as to the effect of those requirements, if properly implemented:

- interconnection with the networks of incumbents and other carriers, which permits our customers to exchange traffic with customers connected to other networks;
- requirements that the ILECs make available access to their facilities for our local loops and transport needs, thereby enabling us to serve customers not directly connected to our networks;
- compensation obligations, which mandate reciprocal payment arrangements for local traffic exchange between us and both incumbent and other competitive carriers and compensation for terminating local traffic originating on other carriers' networks;
- requirements concerning local number portability, which allows customers to change local carriers without changing telephone numbers, thereby removing a significant barrier for a potential customer to switch to our local voice services;
- access to assignment of telephone numbers, which enables us to provide telephone numbers to new customers on the same basis as incumbent carriers; and
- collocation rights allowing us to place telecommunications equipment in ILEC central offices, which enables us to have direct access to local loops and other network elements.

Although the rights established in the Telecom Act are a necessary prerequisite to the introduction of full local competition, they must be properly implemented and enforced to permit competitive telephone companies like XO to compete effectively with the incumbent carriers. Discussed below are several FCC and court proceedings relating to the application of certain FCC rules and policies that are significant to and directly impact our operations and costs as well as the nature and scope of industry competition.

Unbundling of Incumbent Network Elements

In a series of orders and related court challenges that date back to 1996, the FCC has promulgated rules implementing the market-opening provisions of the Telecom Act, including the requirement that the ILECs lease UNEs to competitors at cost-based rates. At the core of the series of FCC orders is the FCC's evolving effort to define which ILEC network facilities must be made available as UNEs. Initially, the FCC defined a broad list of UNEs, consisting of most of the elements of the ILECs' networks. Under pressure from the ILECs, the FCC has

subsequently reduced the list, while preserving access to those network elements critical to the operation of XO's business.

The current list of UNEs was promulgated by the FCC in two orders. The first is the Triennial Review Order, or TRO, which was released on August 21, 2003. Several carriers and other entities appealed the FCC's TRO decision. On March 2, 2004, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in United States Telecom Association v. FCC, No. 00-1012 ("USTA II Decision"). In the USTA II Decision, the court reversed and overturned many of the conclusions of the TRO. In the aftermath of the USTA II Decision, the FCC released the second of its two currently controlling orders, the TRRO, on February 4, 2005. Various parties, including XO, have appealed the TRRO. The case is currently pending before the United States Court of Appeals for the D.C. Circuit. It

is not possible to predict the outcome of those appeals. It is possible that portions of the TRRO could be overturned and that the FCC will issue new rules in their place that further restrict access to UNEs. In addition to the court challenges, several parties, including XO, have petitioned the FCC to reconsider various aspects of the TRRO. It is not possible to predict when or how the FCC will rule with respect to those reconsideration petitions.

As of March 11, 2005, the effective date of the TRRO, the ILECs are obligated to provide as UNEs the following network facilities used by XO to serve its customers:

UNE Loops

DS0 loops. A DS0 loop is a single, voice-grade channel. Typically, individual business lines are DS0 loops. The ILECs must make DS0 loops available at UNE rates on an unlimited basis.

DS1 loops. A DS1 loop is a digital loop with a total speed of 1.544 megabytes per second, which is the equivalent of 24 DS0 circuits. Multiple voice lines and Internet access can be provided to a customer over a single DS1 loop. We provide most of our service with DS1 loops. The ILECs must provide DS1 loops at UNE rates at the majority of their central offices. Competitors, however, are limited to no more than 10 DS1 loops to any particular building.

DS3 loops. A DS3 loop is a digital loop with a total speed of 44.736 megabytes per second, which is the equivalent of 28 DS1 circuits. In some cases, XO serves its large business customers with DS3 loops. ILECs must provide DS3 loops at UNE rates at the majority of their central offices. Competitors, however, are limited to no more than one DS3 loop to any particular building.

ILECs are not required to provide optical capacity loops or dark fiber loops as UNEs. Optical capacity loops, referred to as OCn loops, are very high-capacity digital loops ranging in capacity from OC3 loops, which are the equivalent of three DS3s to OC192. This will not impact our costs.

The ILECs are also not required to provide certain mass market broadband loop facilities and functionality as UNEs. Under the TRO, the ILECs are not required to make newly-deployed fiber-to-the-home, or FTTH, loops available as UNEs and are only required to provide the equivalent of DS0 capacity on any FTTH loop built over an existing copper loop. These recent FCC orders should only limit availability for those specific network elements, which are not material to us. It is possible, however, that the ILECs will seek additional broadband regulatory relief in future proceedings.

UNE Transport

DS1 transport. Whether transport is available as a UNE is determined on a route-by-route basis. ILECs must make transport at UNE rates available at DS1 capacity levels between any two ILEC central offices unless both central offices either (1) serve more than 38,000 business lines or (2) have four or more fiber-based collocators. On routes where DS1 transport must be made available, each individual competitor is limited to no more than 10 DS1 transport circuits per route.

DS3 transport. Access to DS3 capacity-level transport is more limited than access to DS1 transport. ILECs must make transport at UNE rates available at DS3 capacity levels between any two ILEC central offices unless both central offices either (1) serve more than 24,000 business lines or (2) have three or more fiber-based collocators. On routes where DS3 transport must be made available, each individual competitor is limited to no more than 12 DS1 transport circuits per route.

Dark fiber transport. Dark fiber transport is available under the same conditions as DS3 transport.

ILECs are not required to provide access to transport at greater-than DS3 capacity levels. ILECs are also not

required to provide dark fiber transport at any capacity level to connect an ILEC central office with a competitor's facilities.

Transitional availability where elements are no longer available as UNEs

For DS1, DS3, and dark fiber loops and transport that do not meet the criteria for availability set forth above, the FCC established a transitional period during which the ILECs must continue to make the elements available at UNE rates to serve existing customers. For DS1 and DS3 loops and transport, the ILECs must make the elements available at 115% of the TELRIC rate for one year beginning on March 11, 2005. For dark fiber loops and transport,

the ILECs must make the elements available at 115% of the TELRIC rate for 18 months beginning on March 11, 2005.

Although these rules adopted by the FCC in the TRRO became effective on March 11, 2005, many of the requirements imposed by the FCC in the TRO and TRRO were not self-executing. Accordingly, the FCC made clear that carriers must follow the change of law procedures in their applicable interconnection agreements with ILECs to implement any TRO requirements that are not self-executing and that carriers must follow the procedures set forth in Section 252(b) of the Telecom Act to modify interconnection agreements that are silent as to implementation of changes in law. We have been in negotiations with ILECs to amend our interconnection agreements to implement relevant TRO requirements and, to date, have executed amendments in several states.

Additional Federal Regulations

The following discussion summarizes some additional specific areas of federal regulation that directly affect our business.

VoIP. Like a growing number of carriers, we utilize IP technology for the transmission of a portion of our network traffic. The regulatory status and treatment of IP-enabled services is unresolved. The FCC has held that Vonage's VoIP services and similar offerings by other providers are subject to the FCC's interstate jurisdiction, preempting state efforts to regulate VoIP providers as intrastate telecommunications providers. Four separate state commissions have appealed this ruling and the case is currently pending. The FCC, however, left open the question of whether VoIP providers provide "telecommunications" — i.e., basic transmission services — or enhanced "information services." Under the Communications Act of 1934, as amended, or the Communications Act, those are mutually exclusive categories. Generally, telecommunications carriers, including traditional local and long distance telecommunications companies, are regulated under the Communications Act; information service providers are generally unregulated. The FCC has initiated a rulemaking proceeding to address the classification of VoIP and other IP-enabled service offerings. It is not possible to predict the outcome of that proceeding or its effect on XO's operations.

AT&T Declaratory Ruling Re: VoIP. On April 21, 2004, the FCC released an order, the AT&T Order, denying AT&T's request that the FCC find that VoIP services are exempt from switched access charges. The FCC held that an interexchange service that uses ordinary customer premises equipment that originates and terminates on the public switched telephone network, or PSTN, that provides no enhanced functionality, and that undergoes no net protocol conversion, is a telecommunications service and subject to switched access charges. The AT&T order apparently places interexchange services similar to those VoIP services offered by AT&T in the same regulatory category as traditional telecommunications services and, therefore, potentially subjects such VoIP services to access charges and other regulatory obligations including Universal Service fees. Although the FCC did not rule on the applicability of access charges for services provided prior to April 21, 2004, the ILECs may attempt to assert claims against other telecommunications companies including us for the retroactive payment of access charges. On April 22, 2004, SBC Communications filed a collections lawsuit against AT&T and other carriers seeking retroactive payment of unpaid access charges. On February 4, 2005, SBC amended an existing collection case it had filed against Global Crossing and filed a complaint against XO.

Level 3 Forbearance Petition. On December 23, 2003, Level 3 filed a petition requesting the FCC not to apply interstate or intrastate access charges on IP traffic that originates or terminates on the PSTN. Level 3 withdrew that petition on March 21, 2005, shortly before the FCC's statutory deadline for acting. Some observers have interpreted Level 3's withdrawal of the petition as a signal that the FCC was not likely to rule in Level 3's favor. The FCC may ultimately rule on this issue either in its VoIP rulemaking proceeding or in the intercarrier compensation reform

proceeding discussed below. The issue of whether access charges apply to VoIP and other IP traffic that originates or terminates on the PSTN is potentially significant for XO and other carriers.

ILEC Provision of Broadband Telecommunications Services and Information Services. Currently, the ILECs, as dominant carriers, are subject to a relatively high degree of regulation with respect to their broadband service offerings. The FCC, however, has initiated a rulemaking proceeding in which it is considering deregulating, or applying a lower degree of regulation to, ILEC broadband offerings. If the ILECs are largely freed from dominant carrier regulation, they will have much greater pricing flexibility and will pose a greater competitive threat to XO. In a second, related rulemaking, the FCC is considering whether to eliminate certain requirements it imposes on the ILECs with respect to their broadband Internet access services. Currently, where the ILECs offer Internet access or other information services over broadband facilities, they must (1) purchase the underlying broadband transmission

facilities from themselves at tariffed rates and (2) make the underlying facilities available to competitors on a non-discriminatory basis. If the FCC were to eliminate these requirements, it could result in an increase to our network costs. To date, these deregulatory trends have been directed towards facilities used primarily by residential customers, and not by business customers.

Intercarrier Compensation Reform. Currently, telecommunications carriers are required to pay other carriers for interstate access charges and local reciprocal compensation charges. These two forms of intercarrier compensation have been under review by the FCC since 2001. The FCC continues to consider a broad order reforming the intercarrier compensation system and issued a Notice of Proposed Rulemaking on February 10, 2005 to seek further comment on intercarrier compensation reform. Although we are unable to predict the outcome of the FCC's rulemaking procedures, inasmuch as access charges and reciprocal compensation payments make up our largest network expense item, the FCC's action could have a material, adverse affect on our operations and cost of doing business.

Cost-based TELRIC Pricing. On September 10, 2003, the FCC initiated a new proceeding to consider significantly revamping the current TELRIC methodology used for the pricing of UNEs. If the FCC reverses the methodology used for determining UNE rates to allow for rate increases, this could substantially raise XO's costs for leasing UNEs in the future. A decision is expected sometime in 2005. Several state commissions have also initiated proceedings to review the rates that the ILECs charge for UNEs. An adverse ruling in these proceedings would allow the ILECs to increase UNE rates in the applicable state and this could substantially raise our costs for leasing UNEs in the future.

State and Local Regulation

In general, state regulatory commissions have regulatory jurisdiction over us when our facilities and services are used to provide local and other intrastate services. Under the Telecom Act, state commissions continue to set the requirements for providers of local and intrastate services, including quality of services criteria. State regulatory commissions also can regulate the rates charged by CLECs for intrastate and local services and can set prices for interconnection by new telecommunications service providers with the ILEC networks, in accordance with guidelines established by the FCC. In addition, state regulatory commissions in many instances have authority under state law to adopt additional regulations governing local competition and consumer protection, as long as the state's actions are not inconsistent with federal law or regulation.

Most state regulatory commissions require companies that wish to provide intrastate common carrier services to register or be certified to provide these services. These certifications generally require a showing that the carrier has adequate financial, managerial and technical resources to offer the proposed services in a manner consistent with the public interest. We are certified in all of the states in which we conduct business. In most states, we are also required to file tariffs setting forth the terms, conditions and prices for services that are classified as intrastate, and to update or amend our tariffs as rates change or new products are added. We may also be subject to various reporting and record-keeping requirements.

Where we choose to deploy our own transmission facilities, we may be required, in some cities, to obtain street opening and construction permits, permission to use rights-of-way, zoning variances and other approvals from municipal authorities. We also may be required to obtain a franchise to place facilities in public rights-of-way. In some areas, we may be required to pay license or franchise fees for these approvals. We cannot provide assurances that fees will remain at current levels, or that our competitors will face the same expenses, although the Telecom Act requires that any fees charged by municipalities be reasonable and non-discriminatory among telecommunications carriers.

California Public Utilities Commission Proceeding. On September 23, 2004, the California Public Utilities Commission, or the CA Commission, issued a decision that required SBC to adjust monthly recurring rates for certain types of services offered to CLECs by SBC. As a result of that decision, we believed that we were owed a retroactive credit. The billing adjustments and true-up payments required by the decision had been stayed until the CA Commission could: (a) consider mitigations to lessen the negative effect of such true-up payments; and (b) consider issues raised by the U.S. Court of Appeals for the Ninth Circuit regarding the shared and common cost mark-up element. After issuance of the September 23, 2004 decision, the CA Commission issued three separate alternate draft decisions all of which proposed different true-up payment schemes and different shared and common cost mark-up factors as well as retroactive and non-retroactive treatment of the mark-up factor. These three alternate decisions were contentious and were being debated by the CA Commission and various parties to the proceeding.

On March 22, 2005 XO and SBC executed a settlement agreement resolving these issues. As a result of this settlement, on March 25, 2005 SBC made a payment to XO of approximately \$10.0 million. The settlement agreement provides XO with finality on these issues as the settlement agreement prohibits SBC from seeking rehearing before the CA Commission or appealing to any state or federal court the true-up or payment of the true-up monies to XO.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We had \$382.7 million in secured loans as of June 30, 2005. Currently, we do not pay cash interest on the loans under the Credit Facility. As interest accrues at variable rates, our Credit Facility subjects us to interest rate risks.

Marketable securities and other investments at June 30, 2005 consist primarily of investments in equity and debt investments of publicly-traded companies. The fair value of our investment in equity and debt securities exposes us to market risk; however, if the fair value were to increase or decrease immediately, it would not likely have a material impact on our financial position or our results of operations. We are not currently engaged in the use of off-balance sheet derivative financial instruments, to hedge or partially hedge interest rate exposure nor do we maintain any other off-balance sheet arrangements for the purposes of credit enhancement, hedging transactions, or other financial or investment purposes.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The term “disclosure controls and procedures” is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934. These rules refer to the controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files under the Exchange Act is recorded, processed, summarized and reported within required time periods. Our Principal Executive Officer and our Principal Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on the evaluation, they have concluded that, as of the end of such period, the controls and procedures were effective at ensuring that required information was accurate and disclosed on a timely basis in our report filed under the Exchange Act.

Changes in Internal Controls

We maintain a system of internal accounting controls that is designed to provide reasonable assurance that our books and records accurately reflect our transactions and that our established policies and procedures are followed.

During the first quarter of 2005, we implemented a new sales commissioning system and began migrating certain customers to a new billing system. We anticipate the migration of our customers to the new billing system will be completed in the third quarter of 2005. Additionally, we are in the process of combining the customer provisioning system acquired through the acquisition of the Acquired Businesses with the system of the legacy XO business. These actions have resulted in changes to our internal controls over financial reporting.

Except as noted above, there were no other changes to our internal controls that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are involved in lawsuits, claims, investigations and proceedings consisting of commercial, regulatory, securities, tort and employment matters, which arise in the ordinary course of business. In accordance with Statement of Financial Accounting Standards No. 5, “Accounting for Contingencies,” we make a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. We believe we have adequate provisions for any such matters. We review these provisions at least quarterly and adjust these provisions to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel, and other information and events pertaining to a particular case. Litigation is inherently unpredictable. However, we believe that we have valid defenses with respect to legal matters pending against the Company. Nevertheless, it is possible that cash flows or results of operations could be materially and adversely affected in any particular period by the unfavorable resolution of one or more of these contingencies.

We filed an administrative claim in August 2004 against the Allegiance Telecom Liquidating Trust (the “ATLT”). We have claimed that we are entitled to approximately \$50 million in damages related to a variety of actions allegedly taken by Allegiance and the ATLT. The ATLT filed a counterclaim against us on November 24, 2004 seeking damages of approximately \$100.0 million, which claim we believe to be frivolous and without merit. The case went to trial in the United States Bankruptcy Court for the Southern District of New York on May 2, 2005 and has not yet been decided.

Start Investments Inc, or Start, is XO Communications, Inc.’s, or XOC, 10% minority partner in Telecommunications of Nevada, or TON, a Nevada joint venture company whose results of operations are consolidated into the accompanying financial statements. XOC and Start hold promissory notes, collectively referred to as the Notes, from TON for \$63.5 million, referred to as the XOC Note, and \$7.1 million, referred to as the Start Note, respectively. The Notes became due in December 2002 and were not paid or extended on that date, but cannot be accelerated or foreclosed upon without the consent of XOC, which XOC has declined to give, acting in what it believes are the best interests of TON. TON has paid current interest on the Notes to both holders, but at the historic rate of interest, not the higher default rate. Start filed a suit against TON and XOC in the District Court for Clark County Nevada in October of 2003, which alleged that XOC had tortiously interfered with Start’s contractual relations with TON and breached its duty of good faith and fair dealing. The suit seeks temporary injunctive and declaratory relief, as well as damages of approximately \$9.0 million, consisting primarily of the principal amount of the Start Note and interest at the default rate. In July 2005, Start moved to amend its complaint to add a claim against TON for breach of contract for failure to pay the Start Note. We believe we have valid defenses to the claims raised by Start and to its purported calculation of any damages. However, in the event that TON is required to pay the full principal amount of the Notes, absent a negotiated, out-of-court financial restructuring, TON may be forced to seek protection under chapter 11 of the Federal Bankruptcy Code, which could trigger a default on our Credit Facility.

The XOC Note and the accrued interest payable from TON to XOC, and the related note and interest receivable of XOC from TON, are intercompany balances and, in accordance with the principles of consolidation, have been eliminated in the consolidation of the financial statements. The Start Note and the related accrued interest payable, totaling approximately \$8.3 million, are included in other current liabilities in our Condensed Consolidated Balance Sheet.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

The XO Communications, Inc. annual meeting of shareholders was held on May 9, 2005 in New York, New York.

At the 2005 annual meeting of shareholders, the shareholders elected the following individuals to the Board of Directors for the succeeding year and until their successors are duly qualified and elected:

	Votes For	Votes Withheld
Carl C. Icahn	129,371,004	1,117,934
Carl J. Grivner	129,382,705	1,106,233
Adam Dell	129,423,773	1,065,165
Vincent J. Intrieri	129,389,651	1,102,287
Keith Meister	129,387,177	1,101,761
Robert Knauss	129,420,266	1,068,672
Fredrik Gradin	129,425,819	1,063,119
Jon F. Weber	129,389,369	1,099,569

Item 5. Other Information

None.

Item 6. Exhibits

31.1 Rule 13a — 14(a)/15(d) — 14(a) Certification

31.2 Rule 13a — 14(a)/15(d) — 14(a) Certification

32.1 Certificate pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 Certificate pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned thereunto duly authorized.

XO Communications, Inc.

Date: August 9, 2005

By: /s/ William Garrahan

William Garrahan

Senior Vice President and

Acting Chief Financial Officer

(Principal Financial Officer)

EXHIBIT G

PROPOSED TARIFFS

LOCAL EXCHANGE TELEPHONE SERVICES

TITLE PAGE

LMDS Holdings, Inc.

**REGULATIONS, DESCRIPTIONS AND RATES
APPLICABLE TO FURNISHING
LOCAL EXCHANGE SERVICES
WITHIN THE STATE OF SOUTH CAROLINA**

This tariff is on file with the South Carolina Public Service Commission and copies may be inspected during normal business hours at the Company's principal place of business at 11111 Sunset Hills Road, Reston, Virginia, 20190.

Issued: March 2, 2006

Effective:

David LaFrance, Regulatory & External Affairs
11111 Sunset Hills Road
Reston, VA 20190

LOCAL EXCHANGE TELEPHONE SERVICES

CHECK SHEET

Pages of this tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

PAGE	REVISION		PAGE	REVISION	
1	Original	*	26	Original	*
2	Original	*	27	Original	*
3	Original	*	28	Original	*
4	Original	*	29	Original	*
5	Original	*	30	Original	*
6	Original	*	31	Original	*
7	Original	*	32	Original	*
8	Original	*	33	Original	*
9	Original	*	34	Original	*
10	Original	*	35	Original	*
11	Original	*	36	Original	*
12	Original	*	37	Original	*
13	Original	*	38	Original	*
14	Original	*	39	Original	*
15	Original	*	40	Original	*
16	Original	*	41	Original	*
17	Original	*	42	Original	*
18	Original	*	43	Original	*
19	Original	*	44	Original	*
20	Original	*	45	Original	*
21	Original	*	46	Original	*
22	Original	*			
23	Original	*			
24	Original	*			
25	Original	*			

* - indicates those pages included with this filing

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LOCAL EXCHANGE TELEPHONE SERVICES

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EXPLANATION OF SYMBOLS

The following are the only symbols used for the purposes indicated below:

- (C)** - To signify changed regulation.
- (D)** - To signify discontinued rate or regulation.
- (I)** - To signify increased rate.
- (M)** - To signify a move in the location of text.
- (N)** - To signify new rate or regulation.
- (R)** - To signify reduced rate.
- (S)** - To signify reissued matter.
- (T)** - To signify a change in text but no change in rate or regulation.

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LOCAL EXCHANGE TELEPHONE SERVICES

APPLICATION OF TARIFF

This tariff contains the descriptions, regulations and rates applicable to the furnishing of intrastate common carrier communications services by LMDS Holdings, Inc. between points within the State of South Carolina.

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TARIFF FORMAT

- A. Page numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially, however, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc. the Commission follows in their tariff approval process, the most current page number on file with the Commission is not always the Tariff page in effect.
- C. Paragraph Numbering Sequence** - There are various levels of alphanumeric coding. Each level of coding is subservient to its next higher level. The following is an example of the numbering sequence suggested for use in tariffs.
- 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1
 - 2.1.1.A.1.(a)
 - 2.1.1.A.1.(a).1
 - 2.1.1.A.1.(a).1.(i)
 - 2.1.1.A.1.(a).1.(i)(1)
- D. Check Sheet** - When a tariff filing is made with the Commission, an undated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is updated to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on the check sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 1 – DEFINITIONS

Advance Payment - Part or all of a payment required before the start of service.

Authorized User - A person, firm or corporation which is authorized by the Customer or joint user to be connected to the service of the Customer or joint user.

Broadband Wireless Access - Locations from which the Company is providing wireless transmission.

Circuit – A dedicated telecommunications facility provided by the Company to connect two Points of Interconnection as specified by the Customer in a Service Order. Circuits come in different types depending on the speed and data rates provisioned over the physical facilities of the Circuit (i.e., DS1, DS3, OCx, 5 Mbps, 10 Mbps). A Circuit may traverse more than one Link.

Company - LMDS Holdings, Inc., the issuer of this tariff, which is a Nevada corporation, or any of its affiliates which concur in this tariff.

Customer - The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

Hub – A location used to aggregate multiple services and to interconnect traffic. Transport of information from a Hub to Remotes and vice versa occurs via Links. Transport is provided by line of sight technology which includes point to multipoint and point to point wireless technology.

Individual Case Basis (ICB) - A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

IntraLATA Service - Service which originates and terminates within the same Local Access Transport Area (LATA).

InterLATA Service - Service which originates within one Local Access Transport Area (LATA) and terminates in a different LATA.

Link – A direct wireless connection between two physical locations using a single pair of microwave equipment.

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SCL0600

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 1 – DEFINITIONS, (CONT'D.)

Non-Recurring Charges - The one-time initial charges for services or facilities, including but not limited to charges for construction, installation or special fees for which the Customer becomes liable at the time the Service Order is executed.

Point of Interconnection – The point at which the Company's responsibility to provide equipment and service ends and the Customer's responsibility for the information begins, as specified in a Service Order.

Recurring Charges - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

Remote - An end point location which may serve as the termination point for various Circuit types. Transport of information from a Remote to a Hub and vice versa occurs via Links. Transport is provided by line of sight technology which includes point to multipoint or point to point wireless technology. If a site is used as an intermediate location in a chain of point to point services, both ends are defined as a Remote.

Service Order - The written request for communications services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff.

Site – A location from which radio transmission and reception equipment produces Links within a specific geographical area. A site may be Hub, Remote or Point of Interconnection.

Station - Denotes the network control signaling unit and any other equipment provided at the Customer's premises which enables a customer to establish communications connections and to effect communications through such connections.

United States - The 48 contiguous states and the District of Columbia, Hawaii, Alaska, Puerto Rico, the US Virgin Islands, as well as the off-shore areas outside the boundaries of the coastal states of the 48 contiguous states to the extent that such areas appertain to and are subject to the jurisdiction and control of the United States.

User or End User - Any person or entity that obtains the Company's services provided under this tariff, regardless of whether such person or entity is so authorized by the Customer.

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SCL0600

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of the Company

2.1.1 General

The Company's services and facilities are furnished for intrastate communications originating at specified points within the State of South Carolina under the terms of this tariff. Intrastate service is offered in conjunction with interstate service.

The Company provides service in accordance with the terms and conditions set forth under this tariff.

The Company's services and facilities are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week.

Failure by the Company to assert its rights pursuant to one provision of this Tariff does not preclude the Company from asserting its rights under other provisions.

2.1.2 Shortage of Equipment or Facilities

- A.** The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B.** The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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SCL0600

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions

- A.** Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than thirty (30) days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have thirty (30) days. All calculations of dates set forth in this tariff shall be based on calendar days, unless otherwise specified herein.
- B.** Customers may be required to enter into written Service Orders which shall contain or reference the name of the Customer, a specific description of the service ordered, the rate to be charged, the duration of the services, and the terms and conditions in this tariff.
- C.** This tariff shall be interpreted and governed by the laws of the State of South Carolina without regard to the State's choice of laws provisions.
- D.** Another telephone company must not interfere with the right of any person or entity to obtain service directly from the Company.

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SCL0600

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions, (cont'd.)

- E.** The Customer has no property right to the telephone number or any other call number designation associated with services furnished by the Company. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to the Customer, whenever the Company deems it necessary to do so in the conduct of its business.
- F.** The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to this section.
- G.** The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- H.** This tariff shall be interpreted and governed by the laws of the State of South Carolina without regard for its choice of laws provision.

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Reston, VA 20190

SCL0600

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company**

Because the Customer has exclusive control of its communications over the services furnished by the Company, and because interruptions and errors incident to these services are unavoidable, the services the Company furnishes are subject to the terms, conditions, and limitations specified in this tariff and to such particular terms, conditions, and limitations as set forth in the special regulations applicable to the particular services and facilities furnished under this tariff.

- A.** The liability of the Company for damages arising out of the furnishing of these services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts of commission or omission, shall be limited to the extension of allowances for interruption. The extension of such allowances for interruption shall be the sole remedy of the Customer, authorized user, or joint user and the sole liability of the Company.
- B.** The Company shall not be liable or responsible for any special, consequential, indirect, exemplary, lost profits, or punitive damages, whether or not caused by the intentional acts or omissions or negligence of the Company's employees, agents or contractors.
- C.** The Company shall not be liable for any failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Liability of the Company, (cont'd.)

- D.** The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- E.** The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer provided equipment or facilities.
- F.** The Company shall not be liable for the claims of vendors supplying equipment to Customers of the Company which may be installed at premises of the Company nor shall the Company be liable for the performance of said vendor or vendor's equipment.
- G.** The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Liability of the Company, (cont'd.)

- H.** The Company is not liable for any defacement of or damage to the premises of a Customer (or authorized or joint user) resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, when such defacement or damage is not the result of negligence or willful misconduct on the part of the agents or employees of the Company.
- I.** The Company shall not be liable for any damages resulting from delays in meeting any service dates due to delays resulting from normal construction procedures. such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals and delays in actual construction work.
- J.** The Company shall not be liable for any damages whatsoever to property resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by the Company's willful misconduct or negligence.
- K.** The Company shall not be liable for any damages whatsoever associated with service, facilities, or equipment which the Company does not furnish or for any act or omission of Customer or any other entity furnishing services, facilities or equipment used for or in conjunction with any Service.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company, (cont'd.)**

- L.** The Company shall not incur any liability, direct or indirect, to any person who dials or attempts to dial the digits "9-1-1" or to any other person who may be affected by the dialing of the digits "9-1-1". The Company shall have no liability whatsoever, direct or indirect, for any failure, whether or not caused by or foreseeable to the Company, of 911 Service or Enhanced 911 Service. The Customer also agrees to release, indemnify, defend and hold harmless the Company from any loss, harm, cost, damage, infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, maintenance, removal, presence, condition, occasion or use of 911 Service or Enhanced 911 Service features and equipment associated therewith or by any services furnished by the Company in connection therewith, including, but not limited to, the identification of the telephone number, address, or name associated with the telephone used by the party or parties accessing 911 Service or Enhanced 911 Service hereunder and which arise out of the negligence or other wrongful act of the Company, the Customer, its user, agencies or municipalities, or the employees or agents of any one of them.
- M.** THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- N.** The liability of the company for errors in billing shall be limited to the adjustment of the bill pursuant to S.C. Reg. 103-623.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customer's services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notifications requirements. With some emergency or unplanned service-affecting conditions, such as outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.6 Provision of Equipment and Facilities**

- A.** Where construction is required, the Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B.** The Company shall use reasonable efforts to maintain facilities that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities installed by the Company, except upon the written consent of the Company.
- C.** Equipment installed at the Customer Premises for use in connections with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- D.** The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Beyond this responsibility, the Company shall not be responsible for:
 - 1.** the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
 - 2.** the reception of signals by Customer provided equipment; or
 - 3.** network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.7 Non-routine Installation/Maintenance**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

- A.** Customer will pay Non-routine Installation/Maintenance charges referenced above for technicians' time reasonable required, even during regular business hours, when Customer reports a suspected failure and the Company dispatches personnel and the trouble was not caused by the Company's facilities or equipment. Charges will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.
- B.** If Customer issues a trouble report allowing the Company access to the end user's premises and Company personnel are dispatched but denied access to the premises, then Customer will pay the Non-routine Installation/Maintenance charges referenced above.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.8 Special Construction**

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A.** where Company facilities are not presently available, and Company agrees to construct those facilities;
- B.** of a type other than that which the Company would normally utilize in the furnishing of its services;
- C.** over a transmission link other than that which the Company would normally utilize in the furnishing of its services;
- D.** in a quantity greater than that which the Company would normally construct;
- E.** on an expedited basis;
- F.** on a temporary basis until permanent facilities are available;
- G.** involving abnormal costs; or
- H.** in advance of its normal construction.

Special Construction may be assessed for point to point to point or point to multipoint radio transmission and reception facilities. Such facilities may include, but are not limited to, radio transmission equipment, transmit and receive antennae, circuit equipment, and professional engineering services for design and construction of hub and/or remote terminal equipment including mounting of antennae, masts, and installation of transmission cable. Special construction charges will be determined on a case by case basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains with the Company, its agents, contractors or suppliers.

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.2 Prohibited Uses

- 2.2.1** The service the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2** The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer****2.3.1 Customer Responsibilities**

The Customer shall be responsible for:

- A.** the payment of all applicable charges pursuant to this tariff;
- B.** reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer's premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be surrogated to the Company's right of recovery of damages to the extent of such payment.
- C.** providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D.** obtaining, maintaining, and otherwise having full responsibility for all rights-of-way including private or public easements, licenses, roof rights and conduit necessary for the installation and ongoing maintenance of wireless transmission and reception equipment including, but not limited to, roof top antennas, inside wiring and associated indoor equipment used to provide Network Services to the Customer from the Company's designated point of termination or property line to the location of the equipment space described in 2.3.1 (c). Any costs associated with the obtaining and maintaining of the rights-of-way described herein, including the costs of altering the structure to permit installation of Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer;

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer, (Cont'd.)****2.3.1 Customer Responsibilities, (cont'd.)**

- E.** providing a safe place to work and complying with all federal and state laws and regulations regarding the working conditions on any premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- F.** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in or on any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1 (d) above; and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- G.** not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities; and
- H.** making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance for interruptions in service will be made for the period during which service is interrupted for such purposes.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.3 Obligations of the Customer, (Cont'd.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A.** any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to, employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B.** any claim, loss damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a name not contemplated by the agreement between the Customer and the Company.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.3 Obligations of the Customer, (Cont'd.)

2.3.3 Jurisdictional Nature of Traffic

- A.** Customer agrees, represents and warrants that all traffic being delivered by Customer to Company for local termination, and all traffic that Company delivers to Customer that has originated in the same local calling area in which Customer's NXX is assigned and/or in which such traffic is terminated to Customer, is local traffic or is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction.
- B.** Customer further agrees to indemnify, defend and hold harmless Company and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred in connection with: Customer's breach or failure of any representation or warranty; Customer's traffic being processed through the Company switch/node; or the effect of any regulatory or legal modifications/change of law.
- C.** If Customer defaults in fulfilling any material obligation of the Service Order Agreement, any Amendments or this Tariff, Company shall have the right to terminate the Agreement and the Customer shall pay Company, in addition to any other amounts then owing under the Agreement, a cancellation charge equal to the monthly recurring charge times the number of months remaining in the contract. These charges are intended to establish liquidated damages in the event of early termination and are not intended as a penalty.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.4 Customer Equipment and Channels****2.4.1 General**

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

- A.** The Customer is responsible for providing and maintaining any terminal equipment on the Customer premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.
- B.** The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.4 Customer Equipment and Channels, (Cont'd.)****2.4.3 Interconnection of Facilities**

- A.** Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing local exchange service and the channels, facilities, or equipment of others may be provided at the Customer's expense.
- B.** Local Service may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- C.** Facilities furnished under this tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this tariff.

2.4.4 Inspections

- A.** Upon reasonable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and maintenance of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.
- B.** If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten (10) days of receiving this notice the Customer must take this corrective action and notify the Company of the action taken. If Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm. The Company will, upon request twenty four (24) hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements****2.5.1 Payment for Service**

The Customer is responsible for payment of all charges for service and facilities furnished by the Company to the Customer or its Joint or Authorized Users. Objections must be received by the Company within thirty (30) days after statement of account is rendered, or the charges shall be deemed correct and binding upon the Customer. If an entity other than the Company imposes charges on the Company, in addition to its own internal costs, in connection with a service for which a Company Non-Recurring Charge is specified, those charges may be passed on to the Customer.

- A.** The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, user fee, or surcharges including right of way fees imposed by any governmental authority, all of which shall be separately designated on the Company's invoices. However, the Customer shall not be responsible for any income taxes imposed by any local, state or federal government. The Company will not separately charge for the South Carolina gross receipts tax on the Company's invoice for local services.

Certain telecommunications services, as defined in the South Carolina Revised Code, are subject to state sales tax at the prevailing tax rates, if the services originate, or terminate in South Carolina, or both, and are charges to a subscriber's telephone number or account in South Carolina.

- B.** A surcharge is imposed on all charges for service originating at addresses in states, counties, and municipalities which levy, or assert a claim of right to levy, a gross receipt or franchise tax on the Company's operations in any such state, county or municipality, or a tax on interstate access charges incurred by the Company for originating access to telephone exchanges in that jurisdiction. This surcharge is based on the particular state's, county's, or municipality's receipts tax or franchise fee and other jurisdictions taxes imposed directly or indirectly upon the Company by virtue of, and measured by, the gross receipts or revenues of the Company in that jurisdiction and/or payment of interstate access charges in that jurisdiction. The surcharge will be shown as a separate line item on the Customer's monthly invoice.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.2 Billing and Collection of Charges**

The Customer is responsible for the payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

The Company shall bill on a month-to-month basis all charges incurred by, and credits due to, the Customer under this tariff attributable to services established, provided, or discontinued.

- A.** Non-recurring charges are due and payable within 30 days after the date an invoice is mailed to the Customer by the Company.
- B.** The Company shall present invoices for Recurring Charges monthly to the Customer. Recurring charges shall be due and payable within 30 days after the invoice is mailed to the Customer by the Company.
- C.** When service does not begin on the first day of the month, or end on the last day of the month, the charge for the action of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D.** Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the service order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E.** If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then a late payment penalty of 1.5% shall be due to the Company.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.3 Disputed Bills

The Customer shall notify the Company of any disputed items on an invoice within twenty (20) days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Carolina Public Service Commission in accordance with the Commission's rules and regulations. The Commission's address is:

South Carolina Public Service Commission
Synergy Business Park, Saluda Bldg.
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210
Phone: (803) 896-5105

- A. The date of the dispute shall be the date the Company receives sufficient documentation to enable it to investigate the dispute. The date of the resolution is the date the Company completes its investigation and notifies the Customer of the position of the dispute.
- B. The liability of the Company for errors in billing shall be limited to the adjustment of the bill pursuant to S.C. Reg. 103-623.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.4 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an Advance Payment before services and facilities are furnished. The Advance Payment will not exceed an amount equal to the Non-Recurring Charge(s) and three (3) months' charges for the service or facility. In addition, where special construction is involved, the Advance Payment may also include an amount equal to the estimated Non-Recurring Charges for the special construction and Recurring Charges (if any) for a period to be set between the Company and the Customer. The Advance Payment will be credited to the Customer's initial bill. An Advance Payment may be required in addition to a deposit.

2.5.5 Deposits

The Company does not collect deposits at this time.

LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.6 Discontinuance and Restoral Information

- A.** Upon ten (10) days written notice for nonpayment of any amount owing the Company, the Company may discontinue or suspend service without incurring any liability.
- B.** Upon violation of any of the other material terms or conditions for furnishing service, the Company may, by giving 30 days prior written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C.** Upon condemnation of any material portion of the facilities used by the Company or its agents to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D.** Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E.** Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.6 Discontinuance and Restoral Information, (cont'd.)**

- F.** Upon the Company's discontinuance of service to the Customer under this section, the Company, in addition to all other remedies that may be available to the Company by law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.
- G.** Immediately and without notice, if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services, the Company may discontinue service pursuant to this section if:
- 1.** the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s);
 - 2.** the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s);
 - 3.** the Customer states that it will not comply with, or fails to comply with, a request of the Company for security for the payment for service(s) in accordance with this Section;
 - 4.** the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used;

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.6 Discontinuance and Restoral Information, (cont'd.)****G. (continued)**

- 5.** the Customer uses service to transmit a message, locate a person or otherwise give or obtain information without payment for the service;
- 6.** the Customer uses, or attempts to use, service with the intent to avoid the payment, either in whole or in part, of the tariffed charges for the service by:
 - (a)** using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff;
 - (b)** using tricks, schemes, false credit devices, electronic devices; or
 - (c)** any other fraudulent means or devices;
- 8.** the Customer owes any sum thirty (30) days past due;
- 9.** within seven (7) days of the date of written notice to the Customer that the Customer is not complying with any provision of this tariff, the noncompliance is not corrected.

H. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

2.5.7 Return Check Charge

The Company reserves the right to access a return-check charge not to exceed that allowed by the applicable state law as contained in S.C. Code Ann. 34-11-70, whenever a check or draft presented for payment of service is not accepted by the institution on which it is written. This charge applies each time a check is returned to the Company by a bank for insufficient funds.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.6 Cancellation of Service****2.6.1 Cancellation of Application for Service**

- A.** Applications for service are noncancellable unless the Company otherwise agrees. Where the Company permits Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B.** Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.
- C.** The special charges described in this section will be calculated and applied on a case-by-case basis.

2.6.2 Cancellation of Service by the Customer

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever, other than a service interruption (as defined above), Customer agrees to pay to Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in this tariff: all costs, fees and expenses reasonable incurred in connection with

All Non-Recurring Charges reasonably expended by Company to establish service to Customer, plus

- A.** any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus
- B.** all early termination charges specified in the applicable Service Order for the balance of the then current term.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.7 Transfer and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company; (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.8 Notices and Communications**

- 2.8.1** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.8.2** The Company shall designate on the Service Order and address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.8.3** All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third (3rd) business day following deposit of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.8.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.9 Individual Case Basis (ICB) Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such services in this tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 3 – SERVICE AREAS

3.1 Exchange Service Areas

Local exchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs:

1. BellSouth Telecommunications, Inc.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 4 – DESCRIPTION OF SERVICE AND RATES**4.1 Broadband Wireless Service****4.1.1 Description of Service**

Broadband Wireless service is offered as a high capacity dedicated transmission facility available 24 hours per day, 7 days per week. Customers may commit to one, two or three year service terms. The minimum service period for Broadband Wireless services is one year. Should the Customer terminate service prior to the end of the term commitment, the Customer will be billed a termination charge equal to the monthly recurring charge times the number of months remaining in the term.

Broadband Wireless services is an intrastate interexchange service that provides dedicated wireless bandwidth between a Customer designated premises and a Company Point of Presence (POP). Dedicated wireless bandwidth is provisioned from a Company base station to a location selected by the Customer. The base station transmits and the hub equipment receives a point-to-point or point-to-multipoint transmission utilizing radio frequencies in the Local Multipoint Distribution Service (LMDS 27.5 to 31.25 GHz) spectrum. The entire usable bandwidth of the transmission path is available and dedicated to the Customer for their exclusive use. LMDS frequencies provide line-of-sight transmission and will not penetrate trees, walls, glass or other path-obstructing materials. The use of time-division multiple access (TDMA) and FDMA (frequency DMA) technology allows multiple customers within a 3-7 mile coverage radius to share the same radio channel (multipoint).

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SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.2 Limitations**

Service will be provided subject to availability and where technical capabilities permit. The following limitations will apply to the provision of all Broadband Wireless services.

Broadband Wireless microwave equipment requires an unobstructed line-of-sight to a point of interconnection with the Company's base station. Actual data transmission rates depend on a number of factors, including, but not limited to the distance from the customer selected receive site to the Broadband Wireless transmission point. The customer shall be responsible for any and all costs associated with obtaining and maintaining rights-of-way at a receiver site, including costs of altering a structure to permit installation of Company provided facilities. Customer shall bear all such costs which will be charged by the Company subject to Customer's prior approval. The Company may require the Customer to demonstrate compliance with this section prior to accepting an order for service.

Service is offered subject to the availability of necessary facilities or equipment, or both facilities and equipment, and subject to the provisions of this tariff. The obligation of Broadband Wireless to provide service is dependant upon its ability to procure, construct, and maintain facilities that are required to meet the customer's order for service. Broadband Wireless' provision of service through its own facilities requires the use of microwave transmit/receive equipment. The receive equipment must be attached to or located upon the customer's location, often on the roof of the building in which the customer premises is located. Broadband Wireless equipment cannot be installed on the rooftop without the consent of the building owner and/or property manager(s). In addition, Broadband Wireless equipment cannot be installed without access to the building's telephone closet(s), which may not be under the control of the customer or Broadband Wireless. Therefore, Broadband Wireless facilities-based services are subject to the availability of rooftop access and telephone closet access. Broadband Wireless will make all reasonable efforts to secure the necessary facilities.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)

4.1 Broadband Wireless Service, (Cont'd.)

4.1.2 Limitations, (cont'd.)

Broadband Wireless reserves the right to limit or to allocate the use of existing facilities when necessary due to lack of facilities, relevant resources, or causes beyond the Company's control.

Broadband Wireless does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission nor for failure to establish connections.

The Customer shall ensure that its equipment and/or system is properly interfaced with Broadband Wireless facilities or services; that the signals emitted into Broadband Wireless network are of the proper mode, bandwidth, power, signal level or other technical parameters for the intended use of the Customer and in compliance with the criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel or degrade service to other Customers.

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.3 Wireless T-1**

Wireless T-1 is a Broadband Wireless managed service offering providing Customer a total turnkey transport product including: installation; 24 hour/7 day a week network monitoring, maintenance and network performance reporting; detailed billing; and, on-going post-sales support. A Customer purchases connectivity between a Company wireless base station and a remote hub site of its choosing. The Broadband Wireless customer can purchase fixed bandwidth on a single wireless sector on a PTP or PTMP basis in the following increments:

- 4 T-1s
- 6 T-1's
- 8 T-'s
- 10 T-1's
- 12 T-1's

4.1.4 Wireless Ethernet

Wireless Ethernet utilizes Broadband Wireless technology to deliver Layer-2, 10/100BaseT or faster metropolitan Ethernet connections or Dedicated Internet Access (DIA). The Wireless Ethernet product can be used to deliver end-to-end wireless connectivity utilizing standardized 10Mbps or 100Mbps Ethernet interfaces. Wireless Ethernet services can be configured as oversubscribed and unprotected if required by Broadband Wireless customers. Customers can oversubscribe the fixed amount of bandwidth sold/allocated at any rate up to the fixed amount of bandwidth sold/allocated and use the allocated bandwidth for any purpose. The Broadband Wireless customer can purchase fixed bandwidth on a single wireless sector on a point to point or point to multipoint basis in the following increments:

Wireless Ethernet

5 Mbps
10 Mbps
15 Mbps
20 Mbps

Dedicated Internet Access

5 Mbps
10 Mbps
20 Mbps

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SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.5 Rates and Charges**

Rates and charges for Broadband Wireless services are specified below. The Customer will be billed a fixed, flat Monthly Recurring Charge (MRC) for bandwidth in addition to a Non-Recurring Charge (NRC) for installation services provided at the same customer location. Additional Federal, State and Local taxes and Surcharges may also apply. Rates indicated below do not include sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, user fees, or surcharges.

A. Rate Elements

- 1. Air Link.** - A monthly recurring Air Link rate element provides for the dedicated transmission media between a customer designated premise and the Company's Point of Presence. One Air Link charge applies for each transmission path and per each customer point of termination.
- 2. Port Charge** - A monthly recurring Port Charge rate element applies for each Wireless T1 or Wireless Ethernet port access connection to the Broadband Wireless network. The specified charge is billed per port per month for the dedicated bandwidth increments specified below. The monthly recurring Port Charge is based on the Committed Constant Bit Rate specified in the Service Agreement between Broadband Wireless and Customer. Data rates for Customer Ethernet traffic may not exceed the dedicated bandwidth set out in the Service Agreement. Burst charges may apply where Customer exceeds the Committed Constant Bit Rate specified in the Service Agreement

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.5 Rates and Charges, (cont'd.)****B. Wireless T1 MAXIMUM Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
4 T-1s	\$600	\$240	\$3,000	\$3,000
6 T-1's	\$900	\$360	\$3,000	\$3,000
8 T-'s	\$1,200	\$480	\$3,000	\$3,000
10 T-1's	\$1,500	\$600	\$3,000	\$3,000
12 T-1's	\$1,780	\$720	\$3,000	\$3,000

C. Wireless Ethernet MAXIMUM Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$800	\$400	\$1,500	\$1,500
10 Mbps	\$1,050	\$400	\$1,500	\$1,500
15 Mbps	\$1,700	\$400	\$1,500	\$1,500
20 Mbps	\$3,200	\$400	\$1,500	\$1,500

D. Dedicated Internet Access MAXIMUM Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$1,550	\$400	\$1,500	\$1,500
10 Mbps	\$2,600	\$400	\$1,500	\$1,500
20 Mbps	\$4,100	\$400	\$1,500	\$1,500

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.2 Terrestrial DS1 Service**

Terrestrial DS1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having signal format of either Alternate Mark Inversion (AMI) or Bipolar 8 Zero Substitution (B8ZS) and either Super frame (D4) or Extended Super frame formats. DS1 Service has the equivalent capacity of 24 Voice Grade services or 24 DS0 services. AMI can support 24 56Kpbs channels and B8ZS can support 24 64Kbps channels.

Terrestrial DS1 voice loop monthly recurring charge	ICB
Terrestrial DS1 voice loop install charge	ICB

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 5 – CURRENT RATES

5.1 Broadband Wireless Service

A. Wireless T1 Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
4 T-1s	\$300	\$120	\$1,500	\$1,500
6 T-1's	\$450	\$180	\$1,500	\$1,500
8 T-'s	\$600	\$240	\$1,500	\$1,500
10 T-1's	\$750	\$300	\$1,500	\$1,500
12 T-1's	\$890	\$360	\$1,500	\$1,500

B. Wireless Ethernet Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$400	\$200	\$750	\$750
10 Mbps	\$525	\$200	\$750	\$750
15 Mbps	\$850	\$200	\$750	\$750
20 Mbps	\$1,600	\$200	\$750	\$750

C. Dedicated Internet Access Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$775	\$200	\$750	\$750
10 Mbps	\$1,300	\$200	\$750	\$750
20 Mbps	\$2,050	\$200	\$750	\$750

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LOCAL EXCHANGE TELEPHONE SERVICES

SECTION 5 – CURRENT RATES, (CONT'D.)

4.2 Terrestrial DS1 Service

Terrestrial DS1 voice loop monthly recurring charge	ICB
Terrestrial DS1 voice loop install charge	ICB

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INTEREXCHANGE TELEPHONE SERVICES

TITLE PAGE

LMDS Holdings, Inc.

**REGULATIONS, DESCRIPTIONS AND RATES
APPLICABLE TO FURNISHING
INTEREXCHANGE SERVICES
WITHIN THE STATE OF SOUTH CAROLINA**

This tariff is on file with the South Carolina Public Service Commission and copies may be inspected during normal business hours at the Company's principal place of business at 11111 Sunset Hills Road, Reston, Virginia, 20190.

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INTEREXCHANGE TELEPHONE SERVICES

CHECK SHEET

Pages of this tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

PAGE	REVISION		PAGE	REVISION	
1	Original	*	26	Original	*
2	Original	*	27	Original	*
3	Original	*	28	Original	*
4	Original	*	29	Original	*
5	Original	*	30	Original	*
6	Original	*	31	Original	*
7	Original	*	32	Original	*
8	Original	*	33	Original	*
9	Original	*	34	Original	*
10	Original	*	35	Original	*
11	Original	*	36	Original	*
12	Original	*	37	Original	*
13	Original	*	38	Original	*
14	Original	*	39	Original	*
15	Original	*	40	Original	*
16	Original	*	41	Original	*
17	Original	*	42	Original	*
18	Original	*	43	Original	*
19	Original	*	44	Original	*
20	Original	*	45	Original	*
21	Original	*	46	Original	*
22	Original	*			
23	Original	*			
24	Original	*			
25	Original	*			

* - indicates those pages included with this filing

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INTEREXCHANGE TELEPHONE SERVICES

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EXPLANATION OF SYMBOLS

The following are the only symbols used for the purposes indicated below:

- (C)** - To signify changed regulation.
- (D)** - To signify discontinued rate or regulation.
- (I)** - To signify increased rate.
- (M)** - To signify a move in the location of text.
- (N)** - To signify new rate or regulation.
- (R)** - To signify reduced rate.
- (S)** - To signify reissued matter.
- (T)** - To signify a change in text but no change in rate or regulation.

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INTEREXCHANGE TELEPHONE SERVICES

APPLICATION OF TARIFF

This tariff contains the descriptions, regulations and rates applicable to the furnishing of intrastate common carrier communications services by LMDS Holdings, Inc. between points within the State of South Carolina.

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TARIFF FORMAT

- A. Page numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially, however, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc. the Commission follows in their tariff approval process, the most current page number on file with the Commission is not always the Tariff page in effect.
- C. Paragraph Numbering Sequence** - There are various levels of alphanumeric coding. Each level of coding is subservient to its next higher level. The following is an example of the numbering sequence suggested for use in tariffs.
- 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1
 - 2.1.1.A.1.(a)
 - 2.1.1.A.1.(a).1
 - 2.1.1.A.1.(a).1.(i)
 - 2.1.1.A.1.(a).1.(i)(1)
- D. Check Sheet** - When a tariff filing is made with the Commission, an undated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is updated to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on the check sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 1 – DEFINITIONS

Advance Payment - Part or all of a payment required before the start of service.

Authorized User - A person, firm or corporation which is authorized by the Customer or joint user to be connected to the service of the Customer or joint user.

Broadband Wireless Access - Locations from which the Company is providing wireless transmission.

Circuit – A dedicated telecommunications facility provided by the Company to connect two Points of Interconnection as specified by the Customer in a Service Order. Circuits come in different types depending on the speed and data rates provisioned over the physical facilities of the Circuit (i.e., DS1, DS3, OCx, 5 Mbps, 10 Mbps). A Circuit may traverse more than one Link.

Company - LMDS Holdings, Inc., the issuer of this tariff, which is a Nevada corporation, or any of its affiliates which concur in this tariff.

Customer - The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

Hub – A location used to aggregate multiple services and to interconnect traffic. Transport of information from a Hub to Remotes and vice versa occurs via Links. Transport is provided by line of sight technology which includes point to multipoint and point to point wireless technology.

Individual Case Basis (ICB) - A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

IntraLATA Service - Service which originates and terminates within the same Local Access Transport Area (LATA).

InterLATA Service - Service which originates within one Local Access Transport Area (LATA) and terminates in a different LATA.

Link – A direct wireless connection between two physical locations using a single pair of microwave equipment.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 1 – DEFINITIONS, (CONT'D.)

Non-Recurring Charges - The one-time initial charges for services or facilities, including but not limited to charges for construction, installation or special fees for which the Customer becomes liable at the time the Service Order is executed.

Point of Interconnection – The point at which the Company's responsibility to provide equipment and service ends and the Customer's responsibility for the information begins, as specified in a Service Order.

Recurring Charges - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

Remote - An end point location which may serve as the termination point for various Circuit types. Transport of information from a Remote to a Hub and vice versa occurs via Links. Transport is provided by line of sight technology which includes point to multipoint or point to point wireless technology. If a site is used as an intermediate location in a chain of point to point services, both ends are defined as a Remote.

Service Order - The written request for communications services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff.

Site – A location from which radio transmission and reception equipment produces Links within a specific geographical area. A site may be Hub, Remote or Point of Interconnection.

Station - Denotes the network control signaling unit and any other equipment provided at the Customer's premises which enables a customer to establish communications connections and to effect communications through such connections.

United States - The 48 contiguous states and the District of Columbia, Hawaii, Alaska, Puerto Rico, the US Virgin Islands, as well as the off-shore areas outside the boundaries of the coastal states of the 48 contiguous states to the extent that such areas appertain to and are subject to the jurisdiction and control of the United States.

User or End User - Any person or entity that obtains the Company's services provided under this tariff, regardless of whether such person or entity is so authorized by the Customer.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS**2.1 Undertaking of the Company****2.1.1 General**

The Company's services and facilities are furnished for intrastate communications originating at specified points within the State of South Carolina under the terms of this tariff. Intrastate service is offered in conjunction with interstate service.

The Company provides service in accordance with the terms and conditions set forth under this tariff.

The Company's services and facilities are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week.

Failure by the Company to assert its rights pursuant to one provision of this Tariff does not preclude the Company from asserting its rights under other provisions.

2.1.2 Shortage of Equipment or Facilities

- A.** The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B.** The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions

- A.** Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than thirty (30) days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have thirty (30) days. All calculations of dates set forth in this tariff shall be based on calendar days, unless otherwise specified herein.
- B.** Customers may be required to enter into written Service Orders which shall contain or reference the name of the Customer, a specific description of the service ordered, the rate to be charged, the duration of the services, and the terms and conditions in this tariff.
- C.** This tariff shall be interpreted and governed by the laws of the State of South Carolina without regard to the State's choice of laws provisions.
- D.** Another telephone company must not interfere with the right of any person or entity to obtain service directly from the Company.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.3 Terms and Conditions, (cont'd.)**

- E.** The Customer has no property right to the telephone number or any other call number designation associated with services furnished by the Company. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to the Customer, whenever the Company deems it necessary to do so in the conduct of its business.
- F.** The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to this section.
- G.** The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- H.** This tariff shall be interpreted and governed by the laws of the State of South Carolina without regard for its choice of laws provision.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company**

Because the Customer has exclusive control of its communications over the services furnished by the Company, and because interruptions and errors incident to these services are unavoidable, the services the Company furnishes are subject to the terms, conditions, and limitations specified in this tariff and to such particular terms, conditions, and limitations as set forth in the special regulations applicable to the particular services and facilities furnished under this tariff.

- A.** The liability of the Company for damages arising out of the furnishing of these services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts of commission or omission, shall be limited to the extension of allowances for interruption. The extension of such allowances for interruption shall be the sole remedy of the Customer, authorized user, or joint user and the sole liability of the Company.
- B.** The Company shall not be liable or responsible for any special, consequential, indirect, exemplary, lost profits, or punitive damages, whether or not caused by the intentional acts or omissions or negligence of the Company's employees, agents or contractors.
- C.** The Company shall not be liable for any failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Liability of the Company, (cont'd.)

- D.** The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- E.** The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer provided equipment or facilities.
- F.** The Company shall not be liable for the claims of vendors supplying equipment to Customers of the Company which may be installed at premises of the Company nor shall the Company be liable for the performance of said vendor or vendor's equipment.
- G.** The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Liability of the Company, (cont'd.)

- H.** The Company is not liable for any defacement of or damage to the premises of a Customer (or authorized or joint user) resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, when such defacement or damage is not the result of negligence or willful misconduct on the part of the agents or employees of the Company.
- I.** The Company shall not be liable for any damages resulting from delays in meeting any service dates due to delays resulting from normal construction procedures. such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals and delays in actual construction work.
- J.** The Company shall not be liable for any damages whatsoever to property resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by the Company's willful misconduct or negligence.
- K.** The Company shall not be liable for any damages whatsoever associated with service, facilities, or equipment which the Company does not furnish or for any act or omission of Customer or any other entity furnishing services, facilities or equipment used for or in conjunction with any Service.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company, (cont'd.)**

- L.** The Company shall not incur any liability, direct or indirect, to any person who dials or attempts to dial the digits "9-1-1" or to any other person who may be affected by the dialing of the digits "9-1-1". The Company shall have no liability whatsoever, direct or indirect, for any failure, whether or not caused by or foreseeable to the Company, of 911 Service or Enhanced 911 Service. The Customer also agrees to release, indemnify, defend and hold harmless the Company from any loss, harm, cost, damage, infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, maintenance, removal, presence, condition, occasion or use of 911 Service or Enhanced 911 Service features and equipment associated therewith or by any services furnished by the Company in connection therewith, including, but not limited to, the identification of the telephone number, address, or name associated with the telephone used by the party or parties accessing 911 Service or Enhanced 911 Service hereunder and which arise out of the negligence or other wrongful act of the Company, the Customer, its user, agencies or municipalities, or the employees or agents of any one of them.
- M.** THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- N.** The liability of the company for errors in billing shall be limited to the adjustment of the bill pursuant to S.C. Reg. 103-623.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customer's services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notifications requirements. With some emergency or unplanned service-affecting conditions, such as outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.6 Provision of Equipment and Facilities**

- A.** Where construction is required, the Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B.** The Company shall use reasonable efforts to maintain facilities that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities installed by the Company, except upon the written consent of the Company.
- C.** Equipment installed at the Customer Premises for use in connections with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- D.** The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Beyond this responsibility, the Company shall not be responsible for:
 - 1.** the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
 - 2.** the reception of signals by Customer provided equipment; or
 - 3.** network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.7 Non-routine Installation/Maintenance**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

- A.** Customer will pay Non-routine Installation/Maintenance charges referenced above for technicians' time reasonable required, even during regular business hours, when Customer reports a suspected failure and the Company dispatches personnel and the trouble was not caused by the Company's facilities or equipment. Charges will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.
- B.** If Customer issues a trouble report allowing the Company access to the end user's premises and Company personnel are dispatched but denied access to the premises, then Customer will pay the Non-routine Installation/Maintenance charges referenced above.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.8 Special Construction**

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A.** where Company facilities are not presently available, and Company agrees to construct those facilities;
- B.** of a type other than that which the Company would normally utilize in the furnishing of its services;
- C.** over a transmission link other than that which the Company would normally utilize in the furnishing of its services;
- D.** in a quantity greater than that which the Company would normally construct;
- E.** on an expedited basis;
- F.** on a temporary basis until permanent facilities are available;
- G.** involving abnormal costs; or
- H.** in advance of its normal construction.

Special Construction may be assessed for point to point to point or point to multipoint radio transmission and reception facilities. Such facilities may include, but are not limited to, radio transmission equipment, transmit and receive antennae, circuit equipment, and professional engineering services for design and construction of hub and/or remote terminal equipment including mounting of antennae, masts, and installation of transmission cable. Special construction charges will be determined on a case by case basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains with the Company, its agents, contractors or suppliers.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.2 Prohibited Uses

- 2.2.1** The service the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2** The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer****2.3.1 Customer Responsibilities**

The Customer shall be responsible for:

- A.** the payment of all applicable charges pursuant to this tariff;
- B.** reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer's premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be surrogated to the Company's right of recovery of damages to the extent of such payment.
- C.** providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D.** obtaining, maintaining, and otherwise having full responsibility for all rights-of-way including private or public easements, licenses, roof rights and conduit necessary for the installation and ongoing maintenance of wireless transmission and reception equipment including, but not limited to, roof top antennas, inside wiring and associated indoor equipment used to provide Network Services to the Customer from the Company's designated point of termination or property line to the location of the equipment space described in 2.3.1 (c). Any costs associated with the obtaining and maintaining of the rights-of-way described herein, including the costs of altering the structure to permit installation of Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer;

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer, (Cont'd.)****2.3.1 Customer Responsibilities, (cont'd.)**

- E.** providing a safe place to work and complying with all federal and state laws and regulations regarding the working conditions on any premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- F.** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in or on any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1 (d) above; and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- G.** not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities; and
- H.** making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance for interruptions in service will be made for the period during which service is interrupted for such purposes.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.3 Obligations of the Customer, (Cont'd.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A.** any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to, employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B.** any claim, loss damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a name not contemplated by the agreement between the Customer and the Company.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer, (Cont'd.)****2.3.3 Jurisdictional Nature of Traffic**

- A.** Customer agrees, represents and warrants that all traffic being delivered by Customer to Company for local termination, and all traffic that Company delivers to Customer that has originated in the same local calling area in which Customer's NXX is assigned and/or in which such traffic is terminated to Customer, is local traffic or is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction.
- B.** Customer further agrees to indemnify, defend and hold harmless Company and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred in connection with: Customer's breach or failure of any representation or warranty; Customer's traffic being processed through the Company switch/node; or the effect of any regulatory or legal modifications/change of law.
- C.** If Customer defaults in fulfilling any material obligation of the Service Order Agreement, any Amendments or this Tariff, Company shall have the right to terminate the Agreement and the Customer shall pay Company, in addition to any other amounts then owing under the Agreement, a cancellation charge equal to the monthly recurring charge times the number of months remaining in the contract. These charges are intended to establish liquidated damages in the event of early termination and are not intended as a penalty.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.4 Customer Equipment and Channels****2.4.1 General**

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

- A.** The Customer is responsible for providing and maintaining any terminal equipment on the Customer premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.
- B.** The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.4 Customer Equipment and Channels, (Cont'd.)****2.4.3 Interconnection of Facilities**

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing interexchange service and the channels, facilities, or equipment of others may be provided at the Customer's expense.
- B. Interexchange may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- C. Facilities furnished under this tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this tariff.

2.4.4 Inspections

- A. Upon reasonable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and maintenance of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten (10) days of receiving this notice the Customer must take this corrective action and notify the Company of the action taken. If Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm. The Company will, upon request twenty four (24) hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements****2.5.1 Payment for Service**

The Customer is responsible for payment of all charges for service and facilities furnished by the Company to the Customer or its Joint or Authorized Users. Objections must be received by the Company within thirty (30) days after statement of account is rendered, or the charges shall be deemed correct and binding upon the Customer. If an entity other than the Company imposes charges on the Company, in addition to its own internal costs, in connection with a service for which a Company Non-Recurring Charge is specified, those charges may be passed on to the Customer.

- A.** The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, user fee, or surcharges including right of way fees imposed by any governmental authority, all of which shall be separately designated on the Company's invoices. However, the Customer shall not be responsible for any income taxes imposed by any local, state or federal government. The Company will not separately charge for the South Carolina gross receipts tax on the Company's invoice for interexchange services.

Certain telecommunications services, as defined in the South Carolina Revised Code, are subject to state sales tax at the prevailing tax rates, if the services originate, or terminate in South Carolina, or both, and are charges to a subscriber's telephone number or account in South Carolina.

- B.** A surcharge is imposed on all charges for service originating at addresses in states, counties, and municipalities which levy, or assert a claim of right to levy, a gross receipt or franchise tax on the Company's operations in any such state, county or municipality, or a tax on interstate access charges incurred by the Company for originating access to telephone exchanges in that jurisdiction. This surcharge is based on the particular state's, county's, or municipality's receipts tax or franchise fee and other jurisdictions taxes imposed directly or indirectly upon the Company by virtue of, and measured by, the gross receipts or revenues of the Company in that jurisdiction and/or payment of interstate access charges in that jurisdiction. The surcharge will be shown as a separate line item on the Customer's monthly invoice.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.2 Billing and Collection of Charges**

The Customer is responsible for the payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

The Company shall bill on a month-to-month basis all charges incurred by, and credits due to, the Customer under this tariff attributable to services established, provided, or discontinued.

- A.** Non-recurring charges are due and payable within 30 days after the date an invoice is mailed to the Customer by the Company.
- B.** The Company shall present invoices for Recurring Charges monthly to the Customer. Recurring charges shall be due and payable within 30 days after the invoice is mailed to the Customer by the Company.
- C.** When service does not begin on the first day of the month, or end on the last day of the month, the charge for the action of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D.** Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the service order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E.** If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then a late payment penalty of 1.5% shall be due to the Company.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.3 Disputed Bills

The Customer shall notify the Company of any disputed items on an invoice within twenty (20) days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Carolina Public Service Commission in accordance with the Commission's rules and regulations. The Commission's address is:

South Carolina Public Service Commission
Synergy Business Park, Saluda Bldg.
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210
Phone: (803) 896-5105

- A. The date of the dispute shall be the date the Company receives sufficient documentation to enable it to investigate the dispute. The date of the resolution is the date the Company completes its investigation and notifies the Customer of the position of the dispute.
- B. The liability of the Company for errors in billing shall be limited to the adjustment of the bill pursuant to S.C. Reg. 103-623.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.4 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an Advance Payment before services and facilities are furnished. The Advance Payment will not exceed an amount equal to the Non-Recurring Charge(s) and three (3) months' charges for the service or facility. In addition, where special construction is involved, the Advance Payment may also include an amount equal to the estimated Non-Recurring Charges for the special construction and Recurring Charges (if any) for a period to be set between the Company and the Customer. The Advance Payment will be credited to the Customer's initial bill. An Advance Payment may be required in addition to a deposit.

2.5.5 Deposits

The Company does not collect deposits at this time.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.6 Discontinuance and Restoral Information

- A.** Upon ten (10) days written notice for nonpayment of any amount owing the Company, the Company may discontinue or suspend service without incurring any liability.
- B.** Upon violation of any of the other material terms or conditions for furnishing service, the Company may, by giving 30 days prior written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C.** Upon condemnation of any material portion of the facilities used by the Company or its agents to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D.** Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E.** Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.6 Discontinuance and Restoral Information, (cont'd.)**

- F.** Upon the Company's discontinuance of service to the Customer under this section, the Company, in addition to all other remedies that may be available to the Company by law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.
- G.** Immediately and without notice, if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services, the Company may discontinue service pursuant to this section if:
- 1.** the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s);
 - 2.** the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s);
 - 3.** the Customer states that it will not comply with, or fails to comply with, a request of the Company for security for the payment for service(s) in accordance with this Section;
 - 4.** the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used;

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.6 Discontinuance and Restoral Information, (cont'd.)****G. (continued)**

- 5.** the Customer uses service to transmit a message, locate a person or otherwise give or obtain information without payment for the service;
- 6.** the Customer uses, or attempts to use, service with the intent to avoid the payment, either in whole or in part, of the tariffed charges for the service by:
 - (a)** using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff;
 - (b)** using tricks, schemes, false credit devices, electronic devices; or
 - (c)** any other fraudulent means or devices;
- 8.** the Customer owes any sum thirty (30) days past due;
- 9.** within seven (7) days of the date of written notice to the Customer that the Customer is not complying with any provision of this tariff, the noncompliance is not corrected.

H. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

2.5.7 Return Check Charge

The Company reserves the right to access a return-check charge not to exceed that allowed by the applicable state law as contained in S.C. Code Ann. 34-11-70, whenever a check or draft presented for payment of service is not accepted by the institution on which it is written. This charge applies each time a check is returned to the Company by a bank for insufficient funds.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.6 Cancellation of Service****2.6.1 Cancellation of Application for Service**

- A.** Applications for service are noncancellable unless the Company otherwise agrees. Where the Company permits Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B.** Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.
- C.** The special charges described in this section will be calculated and applied on a case-by-case basis.

2.6.2 Cancellation of Service by the Customer

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever, other than a service interruption (as defined above), Customer agrees to pay to Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in this tariff: all costs, fees and expenses reasonable incurred in connection with

All Non-Recurring Charges reasonably expended by Company to establish service to Customer, plus

- A.** any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus
- B.** all early termination charges specified in the applicable Service Order for the balance of the then current term.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.7 Transfer and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company; (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.8 Notices and Communications**

- 2.8.1** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.8.2** The Company shall designate on the Service Order and address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.8.3** All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third (3rd) business day following deposit of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.8.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.9 Individual Case Basis (ICB) Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such services in this tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 3 – SERVICE AREAS

3.1 Exchange Service Areas

Interexchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs:

1. BellSouth Telecommunications, Inc.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4 – DESCRIPTION OF SERVICE AND RATES**4.1 Broadband Wireless Service****4.1.1 Description of Service**

Broadband Wireless service is offered as a high capacity dedicated transmission facility available 24 hours per day, 7 days per week. Customers may commit to one, two or three year service terms. The minimum service period for Broadband Wireless services is one year. Should the Customer terminate service prior to the end of the term commitment, the Customer will be billed a termination charge equal to the monthly recurring charge times the number of months remaining in the term.

Broadband Wireless services is an intrastate interexchange service that provides dedicated wireless bandwidth between a Customer designated premises and a Company Point of Presence (POP). Dedicated wireless bandwidth is provisioned from a Company base station to a location selected by the Customer. The base station transmits and the hub equipment receives a point-to-point or point-to-multipoint transmission utilizing radio frequencies in the Local Multipoint Distribution Service (LMDS 27.5 to 31.25 GHz) spectrum. The entire usable bandwidth of the transmission path is available and dedicated to the Customer for their exclusive use. LMDS frequencies provide line-of-sight transmission and will not penetrate trees, walls, glass or other path-obstructing materials. The use of time-division multiple access (TDMA) and FDMA (frequency DMA) technology allows multiple customers within a 3-7 mile coverage radius to share the same radio channel (multipoint).

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.2 Limitations**

Service will be provided subject to availability and where technical capabilities permit. The following limitations will apply to the provision of all Broadband Wireless services.

Broadband Wireless microwave equipment requires an unobstructed line-of-sight to a point of interconnection with the Company's base station. Actual data transmission rates depend on a number of factors, including, but not limited to the distance from the customer selected receive site to the Broadband Wireless transmission point. The customer shall be responsible for any and all costs associated with obtaining and maintaining rights-of-way at a receiver site, including costs of altering a structure to permit installation of Company provided facilities. Customer shall bear all such costs which will be charged by the Company subject to Customer's prior approval. The Company may require the Customer to demonstrate compliance with this section prior to accepting an order for service.

Service is offered subject to the availability of necessary facilities or equipment, or both facilities and equipment, and subject to the provisions of this tariff. The obligation of Broadband Wireless to provide service is dependant upon its ability to procure, construct, and maintain facilities that are required to meet the customer's order for service. Broadband Wireless' provision of service through its own facilities requires the use of microwave transmit/receive equipment. The receive equipment must be attached to or located upon the customer's location, often on the roof of the building in which the customer premises is located. Broadband Wireless equipment cannot be installed on the rooftop without the consent of the building owner and/or property manager(s). In addition, Broadband Wireless equipment cannot be installed without access to the building's telephone closet(s), which may not be under the control of the customer or Broadband Wireless. Therefore, Broadband Wireless facilities-based services are subject to the availability of rooftop access and telephone closet access. Broadband Wireless will make all reasonable efforts to secure the necessary facilities.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)

4.1 Broadband Wireless Service, (Cont'd.)

4.1.2 Limitations, (cont'd.)

Broadband Wireless reserves the right to limit or to allocate the use of existing facilities when necessary due to lack of facilities, relevant resources, or causes beyond the Company's control.

Broadband Wireless does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission nor for failure to establish connections.

The Customer shall ensure that its equipment and/or system is properly interfaced with Broadband Wireless facilities or services; that the signals emitted into Broadband Wireless network are of the proper mode, bandwidth, power, signal level or other technical parameters for the intended use of the Customer and in compliance with the criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel or degrade service to other Customers.

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.3 Wireless T-1**

Wireless T-1 is a Broadband Wireless managed service offering providing Customer a total turnkey transport product including: installation; 24 hour/7 day a week network monitoring, maintenance and network performance reporting; detailed billing; and, on-going post-sales support. A Customer purchases connectivity between a Company wireless base station and a remote hub site of its choosing. The Broadband Wireless customer can purchase fixed bandwidth on a single wireless sector on a PTP or PTMP basis in the following increments:

- 4 T-1s
- 6 T-1's
- 8 T-'s
- 10 T-1's
- 12 T-1's

4.1.4 Wireless Ethernet

Wireless Ethernet utilizes Broadband Wireless technology to deliver Layer-2, 10/100BaseT or faster metropolitan Ethernet connections or Dedicated Internet Access (DIA). The Wireless Ethernet product can be used to deliver end-to-end wireless connectivity utilizing standardized 10Mbps or 100Mbps Ethernet interfaces. Wireless Ethernet services can be configured as oversubscribed and unprotected if required by Broadband Wireless customers. Customers can oversubscribe the fixed amount of bandwidth sold/allocated at any rate up to the fixed amount of bandwidth sold/allocated and use the allocated bandwidth for any purpose. The Broadband Wireless customer can purchase fixed bandwidth on a single wireless sector on a point to point or point to multipoint basis in the following increments:

Wireless Ethernet

5 Mbps
10 Mbps
15 Mbps
20 Mbps

Dedicated Internet Access

5 Mbps
10 Mbps
20 Mbps

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.5 Rates and Charges**

Rates and charges for Broadband Wireless services are specified below. The Customer will be billed a fixed, flat Monthly Recurring Charge (MRC) for bandwidth in addition to a Non-Recurring Charge (NRC) for installation services provided at the same customer location. Additional Federal, State and Local taxes and Surcharges may also apply. Rates indicated below do not include sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, user fees, or surcharges.

A. Rate Elements

1. **Air Link.** - A monthly recurring Air Link rate element provides for the dedicated transmission media between a customer designated premise and the Company's Point of Presence. One Air Link charge applies for each transmission path and per each customer point of termination.
2. **Port Charge** - A monthly recurring Port Charge rate element applies for each Wireless T1 or Wireless Ethernet port access connection to the Broadband Wireless network. The specified charge is billed per port per month for the dedicated bandwidth increments specified below. The monthly recurring Port Charge is based on the Committed Constant Bit Rate specified in the Service Agreement between Broadband Wireless and Customer. Data rates for Customer Ethernet traffic may not exceed the dedicated bandwidth set out in the Service Agreement. Burst charges may apply where Customer exceeds the Committed Constant Bit Rate specified in the Service Agreement

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.1 Broadband Wireless Service, (Cont'd.)****4.1.5 Rates and Charges, (cont'd.)****B. Wireless T1 MAXIMUM Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
4 T-1s	\$600	\$240	\$3,000	\$3,000
6 T-1's	\$900	\$360	\$3,000	\$3,000
8 T-'s	\$1,200	\$480	\$3,000	\$3,000
10 T-1's	\$1,500	\$600	\$3,000	\$3,000
12 T-1's	\$1,780	\$720	\$3,000	\$3,000

C. Wireless Ethernet MAXIMUM Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$800	\$400	\$1,500	\$1,500
10 Mbps	\$1,050	\$400	\$1,500	\$1,500
15 Mbps	\$1,700	\$400	\$1,500	\$1,500
20 Mbps	\$3,200	\$400	\$1,500	\$1,500

D. Dedicated Internet Access MAXIMUM Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$1,550	\$400	\$1,500	\$1,500
10 Mbps	\$2,600	\$400	\$1,500	\$1,500
20 Mbps	\$4,100	\$400	\$1,500	\$1,500

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 4- DESCRIPTION OF SERVICE AND RATES, (CONT'D.)**4.2 Terrestrial DS1 Service**

Terrestrial DS1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having signal format of either Alternate Mark Inversion (AMI) or Bipolar 8 Zero Substitution (B8ZS) and either Super frame (D4) or Extended Super frame formats. DS1 Service has the equivalent capacity of 24 Voice Grade services or 24 DS0 services. AMI can support 24 56Kpbs channels and B8ZS can support 24 64Kbps channels.

Terrestrial DS1 voice loop monthly recurring charge	ICB
Terrestrial DS1 voice loop install charge	ICB

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 5 – CURRENT RATES**5.1 Broadband Wireless Service****A. Wireless T1 Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
4 T-1s	\$300	\$120	\$1,500	\$1,500
6 T-1's	\$450	\$180	\$1,500	\$1,500
8 T-'s	\$600	\$240	\$1,500	\$1,500
10 T-1's	\$750	\$300	\$1,500	\$1,500
12 T-1's	\$890	\$360	\$1,500	\$1,500

B. Wireless Ethernet Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$400	\$200	\$750	\$750
10 Mbps	\$525	\$200	\$750	\$750
15 Mbps	\$850	\$200	\$750	\$750
20 Mbps	\$1,600	\$200	\$750	\$750

C. Dedicated Internet Access Rates

	Monthly Recurring Charges		Non Recurring Charges	
	Air Link	Port	Air Link	Port
5 Mbps	\$775	\$200	\$750	\$750
10 Mbps	\$1,300	\$200	\$750	\$750
20 Mbps	\$2,050	\$200	\$750	\$750

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INTEREXCHANGE TELEPHONE SERVICES

SECTION 5 – CURRENT RATES, (CONT'D.)

4.2 Terrestrial DS1 Service

Terrestrial DS1 voice loop monthly recurring charge	ICB
Terrestrial DS1 voice loop install charge	ICB

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EXHIBIT H

PROPOSED NOTICE OF FILING

NOTICE OF FILING AND HEARING

LMDS Holdings, Inc. ("LMDS" or "Applicant") filed an Application with the Public Service Commission of South Carolina for a Certificate of Public Convenience and Necessity to provide telecommunications transport services, as a facilities-based and resale competitive local exchange and interexchange carrier, to business customers and other carriers in the State of South Carolina. The Applicant plans to initially offer dedicated point-to-point transport and data services to enterprise customers and other common carriers. The Applicant initially proposes to focus on deploying technology to provide a core set of communications transport services tailored to meet specific needs of carriers, particularly commercial mobile radio service (CMRS) providers and enterprise business customers with high capacity point-to-point digital data communication needs. In addition, the Applicant has requested that the Commission regulate its local exchange services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 1997-467-C. The Applicant also requests that the Commission regulate its business type long distance services in accordance with the principles and procedures established for modified alternative regulation by Orders No. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C.

A copy of the Application is on file in the offices of the Public Service Commission of South Carolina, 101 Executive Center Drive, Saluda Building, Columbia, South Carolina 29210; and is available through John J. Pringle, Jr., Esquire, ELLIS LAWHORNE & SIMS, PA, 1501 Main Street, 5th Floor, Columbia, South Carolina 29201.

PLEASE TAKE NOTICE a hearing, on the above matter has been scheduled to begin at _____ before Hearing Examiner _____ in the Commission's Meeting Room at 101 Executive Center Drive, Saluda Building, Columbia, South Carolina 29210.

PLEASE BE ADVISED that pursuant to South Carolina Code of Laws – Section 58-9-280, as amended, the Commission will invoke the 120-day period allowed for consideration of this matter.

Any person who wishes to participate in this matter, as a party of record with the right of cross-examination should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure on or before _____, **2006** and indicate the amount of time required for his presentation. *Please refer to Docket No. 2006-____-C.*

Any person who wishes to be notified of the hearing, but does not wish to present testimony or be a party of record, may do so by notifying the Docketing Department in writing at the address below on or before _____, **2006**. *Please refer to Docket 2006-____-C.*

PLEASE TAKE NOTICE: Any person who wishes to have his or her comments considered as a part of the official record of this proceeding **MUST** present such comments, in person, to the Hearing Officer during the hearing.

Persons seeking information about the Commission's Procedures should contact the Commission by dialing (803) 896-5100.

Public Service Commission of South Carolina
Docketing Department
P.O. Drawer 11649
Columbia, South Carolina 29211

MARCH - ____-06